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THE NEW DEPARTMENT OF COMMERCE AND LABOR.

A much needed cabinet office has been created by the recent act of Congress establishing the Department of Commerce and Labor. The purpose of the new department is to promote and encourage all phases of foreign or domestic commerce and all allied interests, such as mines and mining, fisheries, ships and shipping, interstate transportation, insurance and labor and labor unions. All bureaus which have had charge of the subject-matter just stated, and which are at present under other departments are transferred to this new department. The man put in charge is the Hon. George B. Cortelyou. The new department evidences the purpose of the president to extend his authority more definitely into the commercial and industrial affairs of the country.

CIVIL SERVICE—PLACING THE CONSULAR SERVICE ON A MERIT SYSTEM.

While we do not often pass any opinion on the advisability of any particular character of legislation, we feel more liberty in doing so when any proposed enactment is such as might carry with it anything of interest to lawyers. Of this character is a measure which has just been favorably reported in the House of Representatives, the purpose of which is to reorganize the consular service of the United States on an improved basis.

The bill, to which we have called attention, renders eligible to appointment, persons between the ages of 21 and 55 who pass satisfactory examinations as to educational qualifications and general fitness. Appointments are to be made to the lowest grades, where a salary of $1,800 a year is given, but the appointees are to be eligible to promotion to the highest positions in the service. Speaking generally, the bill appears to be based upon sound principles. It contemplates entrance to the service upon merit, and the rendering it possible for a well-equipped man to make a career in it—conditions which should certainly attract fit aspirants.

One of the most lamentable features of our republican form of government is the spoils system of making appointments to office. Under this system no inducement is offered the citizen of any ambition or character to study to prepare himself for a life work of service in any of the departments of the government. And in no other department of the government does this system produce such unfortunate results as in the consular service. In this department the most efficient servants of the government at any foreign port is the one who has been longest in the service and acquired an influence among the people to whom he is accredited. What, then, must be the effect on the service if every four years a change is made and the new appointee not only is unfamiliar with the people among whom he is to live, but is wholly without experience as to the duties of the office he is expected to fill. Under every other reputable government the consular service is held up as a career worthy of the ambition of the most gifted citizens within the sovereignty, not as a reward to ward politicians for political services. "To the victors belong the spoils," may be a slogan very well suited for the field of battle, but it is not a proper rule by which to make appointments to offices of trust and responsibility under a respectable government.

NOTES OF IMPORTANT DECISIONS.

MANDAMUS—DIRECTING THE SECRETARY OF STATE TO ENFORCE A PRIVATE CLAIM AGAINST A FOREIGN GOVERNMENT.—Ever since the case of Marbury v. Madison, it has been conclusively settled that neither the President nor any of his cabinet can be compelled to perform any of the duties of their office except those which are purely ministerial. Wherever any discretion is to be exercised, they are the equal of the judiciary and are not subject to their mandate.

This principle was well illustrated by the recent case of United States *ex rel.* v. John Hay, 30 Wash. Law Rep., 825, where the Court of Appeals for the District of Columbia held that the duty of righting the wrongs that may be done citizens of the United States in foreign lands is a political one and appertains to the executive and legislative departments of the government; and that the judiciary is charged with no duty and invested with no power in the premises. The court, therefore, held specifically that an order of the lower court, dismissing a petition for a writ of *mandamus* to require the Secretary of State forthwith to institute vigorous and proper proceedings against the Empire of Germany and the Emperor

thereof for the recovery of damages on behalf of petitioner should be affirmed. The court said:

Even if the legislative department have the power, it has not, so far, undertaken to impose upon the Secretary of State the duty of presenting and urging all claims for redress in all cases that American citizens may submit to him for action. When such duty shall have been imposed by statute, it will be time enough to consider the power to impose it, and, if ascertained to exist, then to further consider whether the performance of the duty in a given case is one that necessarily involves the exercise of discretion. Whatever duty may be owed to a citizen in such cases is, as before stated, a political one, because it involves the relations of the United States with foreign nations; and the performance of that duty in its incipient stage necessitates negotiation which is exclusively the function of the executive department. The powers of that department are vested in the President, and he it is that conducts all intercourse with foreign governments, notwithstanding he may habitually act through the agency of a Secretary of State appointed for the purpose. The latter is the confidential political agent of the President for the execution of his will in matters committed to his discretion by the constitution. To coerce the action of the Secretary, therefore, is to attempt the coercion of the President.

NUISANCE—SWITCHING OF RAILROAD CARS ON SUNDAY AS A NUISANCE.—Is the operation of railroads on Sunday a public nuisance? This would depend on the further question whether such operation is a public necessity. In the recent case of Georgia Railroad Co. v. Maddox, 42 S. E. Rep. 315, the Supreme Court of Georgia held that the operation of a railroad was not a work of necessity and therefore constituted a public nuisance wherever it interfered with religious worship or other common enjoyments of the people on that day. In rendering this decision the court said:

As to the inconveniences, annoyances, and disturbances complained of as a continuing nuisance resulting from the operation of the terminal yard on Sundays, and forming the fourth excepted instance hereinbefore specified, we think the plaintiffs' case is sustained by the facts and the law. Sunday is not an ordinary working day. It is "a day observed by the Christian world as holy, and set apart for the purposes of rest and worship." 24 Am. & Eng. Enc. Law (1st Ed.) 528, 529. This is, in part, shown by the interdiction put by the statute upon the starting of freight trains in this state after 12 o'clock midnight on Saturdays, or the arrival of such trains at their destination, after 8 o'clock a. m. on Sundays, that had been started at a proper time, excepting freight trains of live stock, fruit, vegetables, and other perishable articles. Pen. Code, § 420. It has been held that a railroad company is not bound to carry passengers or freight on Sunday, even when a statute permits it to do so, and if it contracts to do so, and afterwards fails to carry out the contract, it is not an infraction of the company's general duty as a common carrier. See note in 24 Am. & Eng. Enc. Law (1st Ed.) 540, and cases there cited. The pastors and the trustees of two churches, located in Inman Park, testified, in common, that the loud noises on Sundays, from the blowing off of steam, ringing of the bells of engines, and the moving of the engines and trains back and forth over the tracks beside and near the churches, cause intolerable noises, jar, and inconvenience to all worshiping in the churches; that the dense volumes of smoke, soot, and cinders which are emitted from the engines, and pervade the church buildings during church services on Sundays, cause the greatest discomfort and annoyance to the pastors and congregations; and that it is often impossible to hear what is being said by the pastors in the churches. It is to be noted, too, that these inconveniences are confined to the locality of the churches and terminal yards, and that the general public do not share in them. These facts are not denied by the railroad companies. They merely state that it is "occasionally" necessary to use the yard for switching purposes on Sundays, although the evidence shows that the yard is so used on Sundays very frequently. In no part of the evidence for the railroad companies is it stated that such work on Sundays is a necessity, except, as above mentioned, "occasionally." The evidence, then, shows that such work is carried on, on Sundays, more as a matter of convenience to the railroad companies than of necessity, and, therefore, is done unnecessarily. The exception usually made in favor of works of necessity on Sundays does not embrace work which is merely convenient, but not necessary. 24 Am. & Eng. Enc. Law (1st Ed.), 542. Consequently, what is done in this regard unnecessarily is a nuisance. See, also, Village of Pine City v. Munch (Minn.), 44 N. W. Rep. 197, 6 L. R. A. 763.

NUISANCE — NOISES PRODUCED BY SUNDAY BALL GAMES AS CONSTITUTING A NUISANCE.—Noises are one of the necessary accomplishments of modern civilization, and is only one other proof that our blessings do not come to us unalloyed. Noise is a nuisance; it is not only disagreeable but wears upon the nervous system, and tends to shorten life. So all unreasonable, unnecessary and unlawful noises constitute a nuisance.

On this question the recent case of Gelbough v. WestSide Amusement Co., (N.J.) 53 Atl. Rep. 289, is interesting. In this case the court held that the noises caused by the shouts, cheers, and stamping of feet of spectators at Sunday ball games, even though constituting a public nuisance, which may be dealt with as such, will be enjoined at the suit of individuals living in the neighborhood; it being such as to appreciably disturb their rest and quiet. On the question whether such noises as this are lawful, the court said:

"In addition to the rest which a man is supposed to obtain each night, he needs occasionally a whole day of complete rest; and this day, by common consent, has been fixed by Christian peoples to be Sunday, or the first day of the week. In order to maintain that Sunday is a day of rest, we need not go into the question of its Divine origin, or rely upon the truth of the inspiration of the Bible. The fact is that there is abundant ground to believe that the rest of one day in seven may have arisen out of the actual wants of mankind, irrespective of any Divine command. Therefore, by common consent, quite independent of any statutory regulation, it may be considered as settled that mankind is entitled to one day in seven for rest and quiet. But in addition to that, we have the sanction of what are called the "Sunday Laws" of this state and of many other states, which positively prohibit all work and labor and amusements on that day. To that, again, an exception was made as to all those occupations which are deemed necessary, sometimes called "works of necessity and mercy." People travel about on Sunday, and, of late, railroad trains are permitted to run on Sunday. Domestic animals have to be provided for, and food for the use of man must also be provided, on that day. These, however, are exceptions to the general rule that all business must cease on Sunday. In obedience to this legislation, all ordinary business, including all public business, actually does cease on Sunday. For these reasons, it may be properly held that noises which would not be declared to be nuisances on a week day are held to be nuisances if made on a Sunday, because they have the effect of disturbing that quiet and rest which the citizen, wearied with six days of labor, is entitled to have for his rest and recuperation; and he is entitled to it not because the Sunday laws have declared the making of such noises to be unlawful, but because they do substantially interfere with his quiet enjoyment of the Sunday as a day of rest. But on the other hand, the fact that such noise not only does not tend to any useful purpose, but is in fact forbidden by the laws of the land, takes away from the producer of the noise any excuse whatever therefor."

Some of the authorities applying more directly to the case are Walker v. Brewster (1867) L. R. 5 Eq. 25. There Vice Chancellor Wood (afterwards Lord Hatherley) reviews the earlier English cases up to that time, including Soltau v. De Held, 2 Sim. (N. S.) 133. Another case is Inchbald v. Barrington (1869) 4 Ch. App. 388. In this country we have Tanner v. Trustees, 5 Hill, 121, 40 Am. Dec. 337. There Judge Cowan reviews all the authorities up to that date, and holds that a bowling alley is a nuisance *per se*, by reason of its tendency to attract and accumulate a large number of disorderly persons. Snyder v. Cabell, 29 W. Va. 48, 1 S. E. Rep. 241, held that a skating rink was a nuisance. These were all cases of noises made on week days. Cronin v. Bloemecke, 58 N. J. Eq. 313, 43 Atl. Rep. 605.

AMENDMENTS TO THE BANKRUPT LAW OF 1898.

What was known as the Ray bill, proposing certain amendments to the Bankrupt Act of 1898, has passed both branches of Congress, and became the law of the land, on February 5, 1903, when it was approved by the President.

This amendatory act was prepared by Hon. W. H. Hotchkiss,* referee in Bankruptcy at Buffalo, N.Y., and President of the National Asssociation of Referees in Bankruptcy. The amendments suggested by Mr. Hotchkiss and adopted by Congress were the results of the consensus of opinion of referees and experts in bankruptcy all over the land. They are expected to silence any further objection to the act and to perpetuate its influence for many years to come.

While these amendments are now the law, and binding upon all litigants, from the date of their approval, February 5, 1903, they do not apply to cases pending at that date. On this point Sec. 19 of the Ray bill provides: "The provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July, 1898."

In the following paragraphs we have undertaken to announce all the amendments made by the Ray bill in a form more easily available to the practicing lawyer than the mere publication of the act itself. We publish every section of the original act, which has been amended by this new law, and print the amended portions in LARGER TYPE.

Wherever a new section or new subsection has been added we have so denominated it and placed it in its proper chapter or section in the original act. The sections amended are as follows:

Section 2. That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several states, the Supreme Court of the District of Columbia, the district courts of the several territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary, in the best interests of the estates,

and allow such officers additional compensation for such services, but not at a greater rate than in this act allowed trustees for similar services.

Section 3. (*a*) Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, con-

*Mr. Hotchkiss is preparing a revised edition of Collier on Bankruptcy, embodying the new amendments. Mathew Bender, Publisher, of Albany, N. Y., announces that it will be ready for delivery about March 15, 1903.

cealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors,

or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory, or of the United States; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

Section 4. (*b*) Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, MINING or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. Private bankers, but not national banks or banks incorporated under state or territorial laws, may be adjudged involuntary bankrupts.

The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a state or territory or of the United States.

Section 14. (*b*) The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which SUCH condition might be ascertained;

or (3) obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property with intent to hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court.

Section 17. (*a*) A discharge in bankruptcy shall release a bankrupt from all of his provable debts except such as (1) are due as a tax levied by the United States, the state, county, district, or municipality in which he resides; (2) are LIABILITIES for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another—

or for alimony due to or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

Section 18. (*a*) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits TO ENFORCE A LEGAL OR EQUITABLE LIEN in courts of the United States,

except that, unless the judge shall otherwise direct, the order shall be published not more than once a week for two consecutive weeks, and the return day shall be ten days after the last publication unless the judge shall for cause fix a longer time.

(*b*) The bankrupt, or any creditor, may appear and plead to the petition within FIVE days after the return day, or within such further time as the court may allow.

Section 21. (*a*) A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt AND HIS WIFE, to appear in court or before a referee or the judge of any state court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this act:

Provided, that the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

(*b*) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in

bankruptcy had not been instituted, unless by consent of the proposed defendant,

except suits for the recovery of property under section sixty, subdivision b, and section sixty-seven, subdivision e.

Section 40. (*a*) Referees shall receive as full compensation for their services, payable after they are rendered, a fee of FIFTEEN dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt,

and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration,

and from estates which have been administered before them one per centum commissions on

all moneys disbursed to creditors by the trustee,

or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

(c) [New subsection.] The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the cost and disbursements of the proceedings.

Section 48. (*a*) Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered such commissions on all moneys disbursed by them

as may be allowed by the courts, not to exceed

six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, and two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such composition.

Section 57. (*g*) The claims of creditors who have received preferences

voidable under section sixty, subdivision b, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section sixty-seven, subdivision e, have been made or given,

shall not be allowed unless such creditors shall surren der SUCH preferences,

conveyances, transfers, assignments or incumbrances.

Section 60. (*a*) A person shall be deemed to have given a preference if, being insolvent, he has,

within four months before the filing of the petition, or after the filing of the petition and before the adjudication

procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

(*b*) If a bankrupt shall have given a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

And, for the purpose of such recovery, any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

Section 64. (*b*) The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases,

and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery.

Section 65. (*b*) The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the

estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order:

Provided, that the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed: And, provided, further, that the final dividend shall not be declared within three months after the first dividend shall be declared.

Section 67. (*e*) That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this act subsequent to the passage of this act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the state, territory, or district in which such property is situate, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of creditors of the bankrupt. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

Section 70. (*e*) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a *bona fide* holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a *bona fide* holder for value. For the purpose of such recovery any court of bankruptcy as hereinfore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

Section 71. [New section.] That the clerks of the several district courts of the United States shall prepare and keep in their respective offices complete and convenient indexes of all petitions and discharges in bankruptcy heretofore or hereafter filed in the said courts, and shall, when requested so to do, issue certificates of search certifying as to whether or not any such petitions or discharges have been filed; and said clerks shall be entitled to receive for such certificates the same fees as now allowed by law for certificates as to judgments in said courts; Provided, That said bankruptcy indexes and dockets, shall at all times be open to inspection and examination by all persons or corporations without any fee or charge therefor.

Section 72. [New section.] That neither the referee nor the trustee shall in any form or guise receive, nor shall the court allow them, any other or further compensation for their services than that expressly authorized and prescribed in this act.

WILLS UPON CONDITION—EFFECT OF FAILURE OF CONDITION.

EATON v. BROWN.

Court of Appeals of the District of Columbia, Nov. 4, 1902.

In a paper writing offered for probate as a last will and testament, the testatrix said: "I am going on a journey and may not ever return. And if I do not this is my last request;" and then proceeded to make direction as to the disposition of her estate. It appeared that the journey referred to was a visit to the Buffalo Exposition, from which she returned and died in this city some weeks later. It was held that as the alleged will was conditioned upon the happening of an event which never took place, namely the failure of the testatrix to return from her then projected journey, the paper never went into effect as a will.

MR. JUSTICE MORRIS delivered the opinion of the court.

This is an appeal from an order of the Supreme Court of the District of Columbia sitting in special term for Orphans' Court business, whereby probate was refused to a paper writing of a testamentary nature and costs were awarded against the proponent thereof.

The facts of the case, as they appear from the record, are these. One Caroline Holley, formerly a resident of Bloomingburgh, in the state of New York, but since the year 1883 a resident of the District of Columbia and employed here in the Treasury Department of the United States, died in this city on or about the 17th day of December, A. D. 1901, being then about the age of 70 years. After her death there was found among her papers a document of a testamentary nature, wholly in her own handwriting, and bearing date on August 31, 1901, and which in her own peculiar terms and somewhat incorrect spelling and language is as follows:

"WASHINGTON, D. C., Aug. 31, 001.

"I am going on a Journey and may not ever return. And if I do not, this is my last request. The Mortgage on the King House, which is in possession of Mr. H. H. Brown to go to the the Methodist Church at Bloomingburgh. All the rest of My properday both real and personal to My adopted son L. B. B. Eaton of the life Saving Service, Treasury Department Washington D. C. All I have is my one hard earnings and I propose to leave it to whom I please.

(Signed) CAROLINE HOLLEY."

It appears that on September 1, A. D. 1901, the said Caroline Holley took a journey to the Buffalo Exposition, which is presumed to be the journey referred to in the paper; that she went through Canada, came back through the Adirondacks, and then returned to Washington, where she resumed her occupation as a clerk in the treasury department, and died in this city as already stated, on December 17, 1901.

There was no executor named in the alleged will; and L. B. Eaton, the appellant and the residuary legatee and devisee named therein, thereupon filed the paper in the office of the register of wills for this district, and also filed a petition for its admission to probate as a will merely of personal property, it being apparent that in the absence of attesting witnesses it could not be sustained as a will of real estate. In the appellant's petition it is averred that the decedent left personal property of the value of about $5,500, and an indefinite interest in some land in this city; and that there was no other paper of a testamentary nature found among her effects; and that, during the last two or three months of her life, she often spoke of having made her will, that it was among her papers, and that it showed how she wanted her property to go. It is alleged further that she had repeatedly stated during the last two or three years of her life that it was her intention to leave whatever property she possessed at the time of her death to the petitioner La Fayette B. Eaton and the Methodist Church at Bloomingburgh, in the state of New York, where, it is alleged, her body, after her death, was taken for burial.

The next of kin of the deceased appear to have been some cousins. Ten of them are mentioned in the appellant's petition to whom citations were issued. Two of these, the appellees here, filed *caveats* to the probate of the alleged will. Besides the usual grounds of fraud, undue influence, misrepresentation, and irregularity in the execution of the alleged will, and the further ground that Caroline Holley was not at the time of her death or at any time a resident of the District of Columbia, it was objected by the *caveators* that, as the alleged will was conditioned for its validity upon the happening of an event which never took place, namely, her failure to return from her then projected journey, the paper never went into effect as a will. There is no opinion of the learned justice who heard the cause in the court below to be found in the record before us; but it seems to be conceded on both sides that his decision was based on this last-mentioned objection, which he sustained. The decree rendered by him recites that the cause was heard "on the petition and amended petition of La Fayette B. Eaton, the *caveat* thereto (presumably meaning the *caveat* to the alleged will), the answer to said amended petition by Harrison H. Brown, one of the next of kin of said Caroline Holley, the stipulation of council filed in said cause (which was to the effect that the paper writing in question was in the handwriting of the deceased, and that it had been signed by her on August 31, 1901, and that on the 1st of September, 1901, she had gone on the journey mentioned, and had thereafter returned to Washington and resumed her usual occupation, dying there, as stated, on December 17, 1901) and the other papers (which however do not appear in the record before us); and it refused probate and record to the paper writing in question, and dismissed the petition, with costs." From this decree or decretal order the petitioner La Fayette B. Eaton has appealed.

The first assignment of error brings up for review the only substantial question in the case—whether the paper writing in question became a nullity by reason of the failure of the apparent condition upon which it was to become effective; or whether what appears to be a condition was in fact and in legal intendment only the expression of the inducement operating upon the mind of the writer to make the alleged will. And this question we think was rightly determined by the court below by the decree which it made.

Undoubtedly, unless we are prepared to repudiate the overwhelming weight of authority and to hold that there can be no such thing as a conditional will, that is, an instrument of writing limited to go into effect as a testamentary disposition of property only upon the happening of some specified contingency, and not otherwise, the document in this case purporting to be the will of the deceased Caroline Holley can not be sustained as now valid and operative. If the words used in it as a preamble do not constitute a condition upon which the document is to become effective, we find it impossible to say what words could have been used for the purpose. The statement is that, if she does not return from the journey on which she was then about to enter, the paper writing was then to be taken as her last request; that is, as her last will and testament. The converse of the proposition is, that, if she did return, then it was not to be her last will and testament. Language could not well be plainer than this. And as she did return it is very clear that the paper thereafter ceased to have any effect as a testamentary disposition of her estate.

It is open to us, of course, to speculate that she did not mean this, but something directly the reverse of it. But wills can not be established upon mere speculation that parties did not mean what

they said. It is difficult to see why such conditions should be inserted in papers of a testamentary character, when the same result could be had by the execution of another will upon the determination of the specified contingency, or by the destruction or cancellation of the paper. But it is idle to speculate on the actuating motives of parties in their testamentary dispositions. Nowhere, perhaps, are the vagaries of human nature more distinctly evidenced than in the matter and the manner of wills and testaments, especially when these documents are written by the parties themselves, or by persons ignorant of the law. It is often difficult to determine what they mean, or to deduce a coherent and rational purpose from them. But the difficulty would be increased a thousand fold, if courts allowed themselves to go outside of the written instruments, opened the door to oral testimony, and established wills upon speculation as to what was the real intention of the parties irrespective of the written document. No doubt that real intention is sometimes frustrated by the application of this rule of construction. But it was said long ago in this connection—*voluit, sed non dixit*—he may have so intended, but he has not said so—and we are bound by the writing.

The conclusion reached by the court below is sanctioned by the apparently unanimous current of legal authority in England, and by the great preponderance of decision in America. With great industry, learning and ingenuity the principal cases on the subject have been cited and considered in the brief filed on behalf of the appellees in this case. Among them are Parsons v. Lanoe, 1 Ves. Sr. 190; Sinclair v. Hone, 6 Ves. Jr. 607; *In re* Winn, 2 Perry and Davison, 47; Roberts v. Roberts, 8 Jur. (N. S.) 220; *In re* John Porter, L. R. 2 Perry and Davison, 22; *In re* Robinson, L. R. 2 Perry and Davison, 171; Lindsay v. Lindsay, L. R. 2 Perry and Davison, 449; *In re* Ward, 4 Haggard, 176; *In re* Todd, 2 Watts and Sergeant (Pa.) 145; Morrow's Appeal, 116 Pa. 440; Wagner v. McDonald, 2 Harris and J. 345; Maxwell v. Maxwell, 3 Met. (Ky.) 101; Dougherty v. Dougherty, 4 Met. (Ky.) 25; Robnett v. Ashlock, 49 Mo. 171; Magee v. McNeill, 41 Miss. 17. See, also, Jarman on Wills, Vol. I, p. 17: and Schouler on Wills, p. 285.

In the leading case of Parsons v. Lanoe, 1 Vesey, Sr. 190, before Lord Chancellor Hardwicke, the words used are almost identical in their import with those used in the present case. They were: "*In case* I should die before I return from the journey I intend, God willing, shortly to undertake for Ireland, my will and desire is, etc., etc." It appeared also in that case, somewat similar to the present, that the testator in his last illness had told some of the persons around him that his will would be found in a certain designated place, where the paper offered for probate was subsequently found, and that he had frequently alluded to it as his will. He returned from Ireland, and died some time afterwards. Lord Hardwicke, in disposing of the case, said: "I am of opinion that the disposition is a contingent provision, and I think no part was intended to take effect, except he died before his return." And he held also that oral testimony was not admissible to explain or vary the words of the writing.

In the case *In re* John Porter, L. R. 2 P. & D. 22, where the words used were: "Should anything unfortunately happen to me while abroad, etc., etc.," and which were held to make the will conditional, the distinction was pointed out between words of condition and words which simply express the reason and the occasion for making the will, and it was stated that, if by any reasonable interpretation, the language can be construed as referring to the apprehended occurrence as merely the reason for making the will, it should be so construed, and the will should not be regarded as conditional. And the current of modern authority, as claimed on behalf of the appellant, is strongly in favor of this proposition. In pursuance of this view the cases were decided of Bradford v. Bradford, Likefield v. Likefield, 82 Ky. 595; French v. French, 14 W. Va. 459; *In re* George Thorne, 4 Swabey and Tristram, 36; *In re* Dobson, 1 Perry & D. 88; *In re* Lindsay, 2 Bradf. (N. Y.) 204; Thompson v. Connor, 3 Bradf. (N. Y.) 366; Skipwith v. Cabell, 19 Grattan, 758; Cody v. Conly, 27 Grattan, 313. Of these probably the cases of Likefield v. Likefield and French v. French are the strongest in support of the appellant's contention.

In the case of Likefield v. Likefield the Court of Appeals of the State of Kentucky had before it a testamentary paper, which was in these words: "If any accident should happen to me that I die from home, my wife, Julia Ann Likefield, shall have everything I possess, the house and lots and money that is due me, and for her to hold it as her own." And it held: "The rule is that courts will not incline to regard a will as conditional if it can reasonably be held that the maker was simply expressing his inducement to make it, however inaccurate the language may be for that purpose, if strictly construed; and unless the words clearly show that it was intended to be temporary or contingent, it will be upheld. * * * While the word *if* is an apt one to express a condition, yet the language used is so general in character that it shows that the testator intended it as words of *inducement* to the making of the will only, and not that the disposition of his property should depend merely upon the place of his death."

In the case of French v. French the words used by the testator were: "Let all men know hereby, that if I get drowned this morning, March 7, 1872, I bequeath all my property, personal and real, to my beloved wife, Florence." He was about to go on a journey on the day mentioned, which required the fording of a swollen stream near his place of residence, and from which his wife tried to dissuade him. He accomplished the journey in safety, and did not die until three years afterwards. The writing specified was then presented for probate as his will; and the Court of Appeals

of the State of West Virginia said in regard to it: "It seems that it is now an established principle that, while a person may make a conditional will, his intention to do so must appear clearly. The question is, whether the contingency is referred to as the reason or the occasion for making the disposition, or as the condition upon which the disposition is to become operative." And further on it said: "The language can be reasonably interpreted and construed to mean that he refers to the calamity and the time during which it may happen as the reason for making said paper writing, and not as the condition upon which the disposition of the property is to become operative; and the will should be interpreted as though it read,—'Lest I get drowned this morning; or lest I die this morning.'"

These cases have not received unqualified approval. The cases of French v. French, *In re* Dobson, and *In re* Martin were cited by the Court of Appeals of Maryland in the case of Kelleher v. Kerman, 60 Md. 440, 446, 447, where it was said of them: "Without committing ourselves to full approval of these several decisions under their respective circumstances and language employed, we refer to them as vastly stronger cases for holding the will contingent than this one, and where they were held not contingent." In the case of Kelleher v. Kerman it was significantly remarked that the paper writing there at issue "evidently embodied what the testator wanted *in any event* to be done with his property." The cases of Likefield v. Likefield and French v. French were cases in which the wills were made by husbands in favor of their wives, a disposition which they would probably have made of their respective estates in any event; and it is evident in both cases that the testator contemplated the propriety of making wills in view of the possible nearness of death, and did not intend the testamentary disposition to be specifically contingent upon the issue of the journeys upon which they were at the time about to enter.

In the case now before us there is no specific reference whatever to the matter of death, except by implication. Neither dying nor death is mentioned. The sole statements that the testatrix might never return from the journey which she was about to undertake. It is quite consistent with her circumstances that if she did return, she might have made some other disposition of her estate. At all events we find nothing in the words which she used which would remove them from the category of conditional limitations.

It may well be that in all such cases the parties had no actual intention to make their bequests and devises in the shape of conditional limitations; and that all such conditional limitations should be disregarded, or construed merely as statements of the inducement to the making of the wills at the time, if we would give effect to the real intention of the testators. But, in view of the authorities on the subject, and in view of the danger of wandering beyond the letter of the will in order to seek the intention, we are constrained to hold that, in consequence of the words of the preamble and the failure of the contingency on which the testamentary paper in question was to become operative, that paper is now of no effect. And we think that the court below was right in so holding.

NOTE.—*Probate of Wills Which Are to Take Effect on the Happening of a Contingency.* — A contingent will is one which is only to take effect upon condition, or if certain circumstances happen. If the event mentioned as a contingency never happens the will is void. The most usual condition in this class of wills is the uncertainty of a testator's arrival or return from a journey or of his safety during some perilous undertaking into which he is about to enter. While there has been much discussion as to what should be the attitude of the courts toward such wills, we have no hesitation in saying that the better rule is the one which, recognizing the evident desire of the testator not to die intestate, inclines the mind of the court to consider the condition mentioned more as an inducement which led the testator to make the will, rather than a will which was only to be effective if the conditional event specified happened. On this point the language of the court in the case of Thompson v. Connor, 3 Bradf. (N. Y.) 366, is very pertinent: "To make a testament strictly depend upon a condition so as to affect the question of probate, the intention ought to appear very clearly that the will should not take effect except upon the prescribed contingency. The mere *factum* of the instrument implies generally an intention not to die intestate,—a determination to give and bequeath."

The following cases have held the phrases constituting the alleged conditions upon which the wills offered for probate in the several instances were to be effective, to be in reality mere statements of the reason which induced the testator to make his will at the particular time that he did. In the case of Damon v. Damon, 90 Mass. (8 Allen) 192, a testator commenced his will as follows: "I, A B, being about to go to Cuba, and knowing the danger of voyages, do make this as my last will and testament, in manner and form following: First, if by casualty or otherwise, I shall lose my life during this voyage, I give and bequeath to my wife," etc., and afterwards gave independent bequests, and spoke of the instrument as his last will and testament. He made the voyage and returned in safety, and afterwards died. The court held that this was not a contingent will, and was therefore entitled to probate. The court held, however, that the condition in this case, following the word, "First" applied solely to the first devise and made that alone conditional. To same effect Urey's Admr. v. Urey's Extx., 86 Ky. 354, 5 S. W. Rep. 859. In Kelleher v. Kernan, 60 Md. 440, the will offered for probate was as follows: "In anticipation of my departure from the city of Baltimore, and to provide for possible contingencies, I hereby give," etc. The testator made the expected trip, returned safely and died shortly afterwards. The court held the will entitled to probate. The court said: The fact, in the present case, that the maker was about taking a trip away, induced him to make the paper then; but because he states his reason, viz., that it was in anticipation of the trip that he makes the provision against "possible contingencies" does not warrant us in holding that the will was wholly contingent in respect to its operation, and that because he did not die during that trip, but returned and died afterwards at home, leaving this

paper uncancelled, it can have no operation." A case very much like the one just cited is that of Tarver v. Tarver, 9 Pet. (U. S.) 174, where the testator prefaced his disposition by saying, "Being about to take a long journey, and knowing the uncertainty of life I deem it advisable to make a will," which will was held not to be contingent. Phrases such as this are of course plainly only matter of inducement, inviting the testator to make his will at that time. When the word "if" is used, however, the construction of the testator's intention becomes more doubtful. Still, even in this case, decisions have held that the use of this word does not always prove that the testator only meant for his will to become effective on the happening of the contingency mentioned. Thus, in the case of French v. French, 14 W. Va. 459, the will was in these words: "Let all men know hereby, if I get drowned this morning, March 7, 1882, that I bequeath all my property, personal and real, to," etc. The paper was given to his wife when he started. He returned safely and died afterwards, leaving that paper still in his wife's possession, which was, by the decision of the majority of the court, sustained as a valid unconditional will. The decision in this case has been sometimes questioned. In this case of Cody v. Conly, 27 Grat. (Va.) 313, the clause alleged to be conditional was: "I am going away; I may never return. I leave," etc. The testator in this case never left home; nevertheless, the court held the will to be valid and unconditional. In Berton v. Collingwood, 4 Hag. 176, the will began, "Lest I die before the next sun, I make," etc. Held not contingent. A will commencing "In case of sudden or unexpected death, I give," etc., was held not conditional. See, also, case of *ex parte* Lindeny, 2 Bradf. (N. Y.) 204, where the will commenced "We go on board to-morrow. If anything happens to us on the way," etc. The will was held not conditional. The decision is rather doubtful on principle. A very strong case is that of Likefield v. Likefield, 82 Ky. 589. The will in this case commenced as follows: "If any accident should happen to me that I die from home, I give," etc. The maker died at home; nevertheless, the court held that the dying of the testator from home was not a condition precedent to give effect to the will, the words first stated being only words of inducement to the making of the will. This case makes a distinction not often recognized. After citing a number of authorities, holding a will contingent where it specifies death on a particular journey, or in a particular undertaking as an event effectuating the will, the court says: "It will be noticed in all the above cases where the will has been held to be conditional, that a *specific* contingency is named, and it either confined to a *time* certain, or a particular *event*. In this respect they are clearly distinguishable from the case now presented The will in this instance fixes no limit or time, as during a particular journey, or for a particular length of time. It refers to no particular expected calamity, and the words are *general* in their character; and this fact leads us to the conclusion that the testator did not intend the disposition of his estate to depend upon whether he died *at* or *away* from his home." This case is sustained by several English authorities. In the following cases, general conditions were expressed, as "in case I should die on my travels," (Strauss v. Schmidt, 3 Phill. 209); "if I should die during my absence from home," (*In re* Tylden, 18 Jurist, 136); "in case of any fatal accident happening to me, being about to travel by railway," (*In re* Dobson, 1 Eng. Law Rep. 88); "in the event of any accident happening to me," (Thorne's Case, 4 Sw. & Tr). In all these cases the wills were held not contingent.

The cases which have held clauses embodying a condition to make the wills contingent on the happening of the event specified are numerous, but will be found to be in the majority of cases confined to those phrases which commence with the word "if" or some similar word and referring to some particular journey or some particular time. Thus phrases, such as these, "if I never get back," referring to a particular journey, or "should anything happen to me" referring to a particular time; have been held to make the taking effect of the will dependent on the happening of the condition mentioned. Cases construing such instances are as follows: Maxwell v. Maxwell, 60 Ky. (3 Metc.) 101; Wagner v. McDonald, 2 Har. & J. (Md.) 346; Magee v. McNeil, 41 Miss. 17; Todd's Will, 2 W. & S. (Pa.) 145; Dougherty v. Dougherty, 61 Ky. (4 Metc.) 25; Morrow's Appeal, 116 Pa. St. 440, 9 Atl. Rep. 660.

JETSAM AND FLOTSAM.

VESTED RIGHTS IN THE DEFENSE OF THE STATUTE OF LIMITATIONS.

The degree of protection afforded defenses to an action by the provision of the fourteenth amendment that no state shall "deprive any person of property without due process of law," and by the similar provisions in the state constitutions, has not yet been fully determined. The theoretically correct rule would seem to be that a fully matured defense cannot be destroyed by legislative enactment, since the practical result of such action would be the taking of property previously free. Important modifications, however, have been made by the courts. A wise and necessary, though not strictly defined, exception is found in remedial legislation; defenses based not on any equity in the defendant, but purely on informalities and technical mistakes, can be removed when justice demands it. Danforth v. Groton Water Co., 178 Mass. 472. Certain other cases which may be regarded as forming a second exception, arise when the legislature has provided remedies for rights which had been lying dormant. Hewitt v. Wilcox, 42 Mass. 154; Ewel v. Daggs, 108 U. S. 143. In the former of these cases the court held that the repeal of a statute which had barred unlicensed physicians from recovering fees, authorized recovery for past services. In cases of this sort the defense is based not on any equity of the defendant but on a disqualification of the plaintiff; and it would be going far to say that there is a vested right in such a defense. A third exception has been made by the United States Supreme Court in holding that a legislature can constitutionally remove the bar of the statute of limitations on contract claims. It is argued that the statute bars only the remedy — as is shown by the revival of the obligation under a new promise — and that this artificial defense can be removed by the same power that created it. Campbell v. Holt, 115 U. S. 620. Influenced by this case and by a desire to obtain "substantial justice," the Massachusetts court in a recent case holds constitutional an act extending the period of limitation, after the original period had expired, on claims against a railroad for damages caused by a change of grade. Dunbar v. Boston & P. R. Corp., 63 N. E. Rep. 916 (Mass.).

It is submitted with deference that these two cases carry too far the exceptions to the rule that a matured defense cannot be destroyed by the legislature. The legislation in these cases cannot be called remedial, since no merely technical mistake or evident injustic

was involved; it was only the expression of a doubtful change of policy on the part of the legislature. The distinction between these cases and those represented by Hewitt v. Wilcox, *supra*, is brought out by comparing the different policies underlying the statutes which created the defenses. In the latter the object was not to free patients from the obligation to pay their bills, because of any right on their part, but to prevent unlicensed physicians from practicing. In the former the statute recognizes a right in the debtor arising from the lapse of time, and is based on that as well as on the delay and negligence of the creditor. It is conceded that the title to property given by the statute cannot be impaired. McEldowney v. Wyatt, 44 W. Va. 711, 45 L. R. A. 609. In the case of contract rights the party originally at fault has had no opportunity to acquire title, bnt he has gained a real right to have existing conditions remain unchanged. Again, it is argued that the defense of the statute simply gives an opportunity to escape frem a just debt. If a defense mainly produces injustice, the legislature should abolish it for the future. But the statute of limitations cannot be so regarded; it certainly operates as justly in freeing debtors as in giving title to thieves,—a result generally approved.

The courts might have confined themselves to the support of strictly remedial legislation. Since they extend their support of the legislatures beyond that, it would seem wise to make the test the existence of a positive right in the defendant, as distinguished from a mere lack of a remedy in the plaintiff. It is submitted that such a test would place the defense of the statute of limitations in all classes of cases under the protection of the constitution.—*Harvard Law Review.*

THE DOCTRINE OF ULTIMUS HÆRES IN INTERNATIONAL LAW.

Probably few readers of Lord M'Laren's Treatise on Wills and Succession (1st Ed., i. p., 22.) notice a small paragraph in which he says: "According to Savigny, the right to the perception of *bona vacantia* is to be regarded as supplementary to the law of succession, and it belongs to the fisk of the defunct's last domicile. This statement may be admitted subject to the necessary corrections for the case of immovable property." This paragraph reappeared in the third edition, the authorities quoted being Savigny and Bar, the latter of whom does not appear to decide the question directly.

With all deference to such an authority as Savigny, it may be pointed out that the forfeiture to the fisk is not regarded as a succession in the Roman law. *Fiscus* could not be *haeres*, because it came after the *bonorum possessores*, who were not *haeredes*, and were in fact opposed to them. (Ulp. Reg. xxviii, 7.) So the constitution of Honorius and Theodosius given as L. 4 C. *de bonis vac.*, etc., (10, 10,) provided that the goods of deceased persons should be transferred to the Treasury if they left no lawful *heirs*. (See Puchta *Curs. de Inst.*, ii. p. 486, 8th Ed.)

But the doctrine that this transfer is a succession has been definitely rejected by the leading Scottish authorities. So Stair (iii, 3, 47) says: "*Ultimus haeres* may seem to be a succession from the dead, and to come in amongst other heirs, yet though it hath the resemblance of an heir, because it hath effect where there is no other heir, and makes the heritage liable to pay the defunct's debts, it is only a caduciary confiscation of the defunct's estate, with the burden of his debt, but no proper succession to him therein." There is indeed an authority to the opposite effect, Goldie v. Murray. (1753, M. 3183.), but Lord Kames in his report adds: "It evidently appeared to me that the court was here misled by an inaccurate expression. The king is named last heir, not that he is an heir in any proper sense; but only that he has a right, *jure coronae*, to all goods which have no proprietor. Yet this expression was the only foundation of the judgment, which bestowed upon the king one of the most extraordinary privileges of an heir." Bankton (i, p. 33,) may be quoted as an authority for the correct doctrine, but the grounds of his argument have been partly set aside by the House of Lords in Bruce v. Bruce (1790, 3 Pat. 163), and other cases, so that the weight of his authority is lessened. Erskine (Inst. iii, 10, 4) argues that the forfeiture to the fisk is a true succession, but the remarks of Lord Kames, just quoted, apply to him with great force.

Erskine says: "The chief reason urged in support of this opinion is, that neither the king nor his donatary are liable for the debts of the deceased, but only to the amount of his estate. It seems incorrect, however, to give the name of *bona vacantia* to subjects which pass from the deceased proprietor directly to the crown, or to class this right of the crown among confiscations which imply the loss of an estate for some crime or delinquency; it bears a much greater resemblance to the right of an heir, for the subject of it is an *universitas*, which in other cases is called an *hæreditas*, comprehending the whole estate of the deceased, and it passes as succession does from the dead to the living." He then goes on to explain that the king is not liable for debts beyond the extent of the inventory, because he has done no act to make him liable. But it may be observed that if the estate were insolvent, there could be nothing to go to the crown. And further, the *beneficium inventarii* was in Erskine's time a special privilege of the crown, but is now by statute a part of the common right of every heir or executor. His argument might have some plausibility now, bnt, at the time when he wrote, his criticism of Stair was most inconclusive. In a previous passage (Inst. iii, 10, 2, he had already laid down the correct law, when he said: "The rule *Quod nullis est, cedit Domino Regi* applies equally in both cases (*i. e.*, heritage and movable). The same doctrine took place in the Roman Law, L. 1, 4, C. *De bon. vac.* When the king succeeds in this way, he is called *ultimus hæres* or the last heir." If we except the common use of the phrase *ultima hæres* during the reign of Queen Victoria, Erskin's argument is the last serious attempt to adopt as law a loose popular expression. The king is the heir, because he is not the heir. He succeeds, because there is no person to succeed. Erskin needed not have troubled himself with the ideas of forfeiture and confiscation, for the person was dead and the crown was merely appropriating property which was not property—*res nullrus*.

The law attacked by Erskine was feudal in its origin as we may gather from *Regiam Majestatem:* (ii, 53 following Glanvill, lib. 7, ch. 16.) "Quhen ane man deceissis untestat, all his cattell and his gudes perteins to his lord. 2. And gif he hes moe lords nor ane, ilk ane of them sall hav samikill as is within his awin lordship and dominion." In Chapter 55, we have the popular usage: "The overlords of ilk man are their *last heires* the subsequent exposition of the law treats the transfer as "tynsell," and "escheit," of the same character as where a man is convicted of felony. (Glanvill, 7, 17.)

As Erskin himself shows in the case of heritable property, when the deceased was not a crown vassal,

the kind could not become the vassal of a subject, and therefore could not hold the lands. He gifted them to a donatary. (Inst. iii. 10, 3.) This seems fatal to the argument for succession.

In his *Principles* (Sec. 1669), Bell sums up the law, by saying: "It is a caduciary right and not a right of succession," and so, Guthrie adds, "the crown cannot succeed as conditional institute, under a destination to 'heirs.'" (Torrie v. Munsie, 1832, 10 S. 597.)

The support of the theory of succession being thus cut away, it may be noticed how great would be the inconvenience of carrying out Savigny's doctrine. The law of the domicile or nationality was adopted largely on the ground of convenience, but it is certainly more convenient that each state should take what is in its own territory, subject to debt, native or foreign, than that a fictitious succession should be set up with all the trouble of collection. The person is *ex hypothesi* dead, he has no representatives to carry on his moral or corporate capacity, and his property has therefore become *res nullius*, which may be appropriated by the state tn whose territory it is situated. Even if we argue that the modern state can be a true representative and carry on the *persona* of the deceased, it may be pointed out that he has determined the matter by connecting himself with several states, to the extent of the property to be found in their respective territories.

But there is of course no objection to the forfeiture being treated as a succession, and the fisk being declared an heir as is done in the German Civil Code, Article 1936. Within the confederation, there may be many competing fisks besides the imperial one. This provision that the fisk of the domicile succeeds does not touch the question of an entirely foreign fisk.

The subject is considered by Wharton (Conflict of Laws, Secs. 602, 603), who after giving the doctrine of Savigny, Gluck and Puchta as that of the Roman law, says, "on the other hand, where the theory of universal succession is rejected, and where the *bona vacantia* are viewed by the territorial law as subject to singular succession (*e. g.*, where there is a positive local law, treating property left by an intestate without known heirs as an escheat, or where on feudal principles such property reverts to the lord paramount), then the *lex rei sitæ* controls. And this no doubt is the Law in England and the United States with regard to real estate." In a note he adds that, "according to Demangeat the French courts have repeatedly decided that all property in France movable as well as immovable, that is found without an owner goes to the French *fiscus*." Dr. A. Weiss (Dr. int. prive, iv, p. 569), gives the same account of the French law, and explains that the right of the state is not one of succession; that the escheat is an act of sovereignty, and to allow a foreign state to interfere would be to interfere with the French sovereignty.

The difficulty as to how a foreign fisk could make up a title is removed by the power given by 24 and 25 Vict. ch. 121, to appoint as executor a foreign consular agent (M'Laren, Wills and Succession, 3d Ed., ii, 861). But of course this is merely a title for administration and does not decide the substantive rights of the beneficiaries.

The question was raised in England in the recent case of *In re* Barnett's Trusts (1902, 18 R. T. L. 454). Heller, a domiciled Austrian, died in Vienna, in 1883. He had no heirs, and by Art. 760 of the Austrian Code his estate fell to the Austrian "Kammer." Part of this estate consisted of consols in England, which were claimed both by the British and by the Austrian Treasury. Kekewich, J., decided in favor of the former. He is reported to have said: "The crown did not claim the property by succession, but because there was no succession. It claimed this property as *jura regalia*, as a matter of right in the exercise of its sovereign power. If that was the sound view, he could not himself see how according to English law there could be any right for anyone else to say that the maxim *mobilia sequuntur personam* applied, and that there ought to be a distribution according to the law of the deceased's domicile, where by the very fact of his decease he lost all right to have his property distributed amongst those whom he left behind." As his lordship observed, there was no real conflict between the laws of two countries. On the very principles laid down by Savigny, if we try to interpert Article 760 of the Austrian Code, the heirless goods — *erbloses Gut* — must be in the territory of the empire. The provision is rather political than legal. The state is only a *bona fide* possessor, if heirs afterwards present themselves.

From the notes to Article 760 given in the edition of the code published in Vienna in 1883, it appears that the individuals and corporations therein referred to as having a claim to the inheritance, no longer possess such a right. It is also stated that there is a question as to rights of confiscation by certain cities, Vienna, Prague, and others. This last fact points to the law being local in its effect. And once more it may be pointed out, though it is in general misleading to argue from merely grammatical considerations, that the Articles prior to 760 deal with persons, while the title of this article is "Erblose Verlassenschaft," and by the enactment it is the inheritance itself which is disposed of. If a person dies in Austria, leaving no children, no distant relative, and no spouse surviving, and if in addition — to take an extreme case — he has no property in Austria, *cadit quæstio*. The object contemplated by the legislator was to save for public purposes property which belonged to no one. The whole object of Article 760 is to dispose of the property somehow, and even if succession is a personal law, force of circumstances makes Article 760 in the last resort a real statute.—*Juridical Review.*

BOOK REVIEWS.

LEAVITT'S CODE OF NEGLIGENCE.

The book which we have undertaken to review this time evidences a movement which ultimately, we believe, will sound the death-knell of the general text-book, at least, for all but scholastic purposes. Leavitt's Code of Negligence is one of a series of local text-books giving the law on a given subject as announced by the courts of some particular state. The volume we have under consideration at the present time, for instance, gives an exhaustive statement of the law of the state of New York in respect of negligence and kindred subjects, as declared by its court of last resort, and is edited by one of the most prominent members of the New York bar, — John Brooks Leavitt, LL. D. The plan of the book is unique in the extreme. The author has no opinions of his own, but simply gathers all the cases together, and, by a wonderful system of analysis, puts the whole law on any given point at the fingers' ends of the lawyer, in a few moments of investigation. For instance, all the cases are analyzed into three parts. Part I. is entitled Cases Codified. Here the cases are analyzed into their general principles, as, for instance, "causative negligence," taking

up the whole subject of negligence in its relation to individuals, corporations, municipal corporations and *quasi*-municipal bodies, boards and public contractors; contributory negligence and assumption of risk; questions of fact, defenses, damages, evidence, parties, pleading and practice. Part II. is styled Cases Condensed. Here all the cases are arranged according to the date when rendered, and their consecutive order in the reports. The facts and decision in each case are given in condensed form. Part III. is called Cases Classified. Here all the cases are arranged under headings denoting not the particular principle involved, but the particular subject-matter of the cases. This part is divided into four classes. Class A, Accidents; Class B, Cases Arising Under Contract; Class C, Cases Arranged According to Verdicts. This class is again divided into two parts; first, amount awarded by juries, and second, amounts pssed on by the courts. Class D, Cases Arising Under Statute. In addition to these three grand subdivisions there is a complete table of cases giving the pages where each case may be found, analyzed under the three subdivisions mentioned.

Attention need not be called to the fact that a book of this kind is well calculated to make the "case" lawyers leap for joy, and that its ultimate result, provided the plan is extended into other subjects of the law, will be to increase that brood of lawyers who always seem to have time to keep their feet perched on their desks and discuss politics and general questions of law with any one who may chance to call. Seriously, however, it cannot be doubted, that in the preparation of briefs this is a labor saving convenience *par excellence*, and will be of incalculable benefit to every lawyer in the state of New York, and to others desiring to cite decisions from that state. Published by Mathew Bender, Albany, N. Y.

BOOKS RECEIVED.

The American Digest Annotated, continuing without omission or duplication the Century Edition of the American Digest, 1658 to 1896, 1901B. A Digest of all Current Decisions of all the American Courts, as Reported in the National Reporter System, the Official Reports, and elsewhere, together with Leading English and Canadian Cases, from April 1, 1901, to September 30, 1901. Prepared and Edited by the Editorial Staff of the American Digest System. St. Paul, Minn: West Publishing Company, 1902.

The American Digest Annotated, continuing without omission or duplication the Century Edition of the American Digest, 1658 to 1896, 1902A. A Digest of all Current Decisions of all the American Courts, as Reported in the National Reporter System, the Official Reports, and elsewhere, together with Leading English and Canadian Cases, from October 1, 1901, to March 31, 1903. Prepared and Edited by the Editorial Staff of the American Digest System. St. Paul, Minn: West Publishing Company, 1902.

The Encyclopædia of Evidence. Edited by Edgar W. Camp. Vol. 1. Los Angeles, Cal. L. D. Powell Company, 1902. Sheep, pp. 1020. Price, $6. Review will follow.

HUMOR OF THE LAW.

A Massachusetts jury reported that it would be impossible for them to reach an agreement. The court was displeased, and lectured them for their failure to agree. "Why, your honor," exclaimed the new juryman, "how in the world do you expect the members of the jury to agree when the lawyers in the case can't agree themselves?"

"A lawyer's life is not all fees and fun," confessed a New York lawyer the other day. "I was in the criminal court building a few weeks ago when a man from my district asked me to defend him in special sessions, and wait for my fee. Just before the case was to be called for trial he came around to borrow a ten, and got it.

"'Send for me when your case is called,' I said.

"When I came out of general sessions at noon one day the client was waiting for me.

"'I was discharged,' he exclaimed.

"'I thought I was to defend you,' I said.

"'You see,' he replied, 'I couldn't afford to pay a first-class lawyer's fee, so I got one of those cheap fellows with the X you loaned me. I thought that would be cheaper.'"

DE MINIMIS.—

The law pays little heed
To littles, it appears:
The bandage on Justicia's eyes
Quite likely interferes.
Microscopy was not begun
Tho' Coke did write on Littleton.

Hence briefs are rarely brief,
Points are not points at all;
A lawyers's feet are sometimes large,
His fees are seldom small.
All these are what the law expects,
De minimis non curat lex.

The New York *Sun* relates the following stories of the late William F. Howe, the celebrated New York criminal lawyer:

Several years ago he was held up by two foot-pads on a dark night. While one of the men was going through his pockets Mr. Howe exclaimed.

"Dickey the Brute. I didn't think this of you after all I have done for you." The man addressed peered into the lawyer's face and exclaimed, "Why you're Howe the lawyer."

The fellow turned to his companion and said, "Let him go, Jack; you will want him to lie for you some day as hard as he did for me when he got me off twenty years sure."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCORD AND SATISFACTION — Consideration.—There can be no accord and satisfaction of a disputed claim, unless something of value has been received in full payment thereof. — Ness v. Minnesota & Colorado Co., Minn., 92 N. W. Rep. 333.

2. ACCOUNT STATED—Statute of Limitation.—The three-year statute of limitation is not good a defense to an action on an account stated. —Moore v. Crosthwait, Ala., 33 So. Rep. 28.

3. ACKNOWLEDGEMENT — Interested Officer.—A cashier of a bank held incompetent to take an acknowledgment to a mortgage in which the bank had a beneficial interest. —First Nat. Bank v. Citizens' State Bank, Wyo., 70 Pac. Rep. 726.

4. ADVERSE POSSESSION—Laches Against Government. —Inasmuch as laches cannot be invoked against the government, user of government lands for pasturage gives no title.—United States v. Dastervignes, U. S. C. C., N. D. Cal., 118 Fed. Rep. 199.

5. ALTERATION OF INSTRUMENTS — Alteration. — The negotiability of a note held not destroyed by the payee filling in the blank space for the amount and changing the figures in the margin to correspond with the amount inserted in the blank space. — Prim v. Hammel, Ala., 32 So. Rep. 1006.

6. ANIMALS — Enforcement of Lien.—That the owner of an animal sold to enforce a lien was apprised of the proceedings did not excuse the lienor's failure to give him personal notice, as required by Mill's Ann. St § 114 — Bailey v. O'Fallon, Colo., 70 Pac. Rep. 755.

7. APPEAL — In Behalf of Others.—An appeal by one of several parties to a special proceeding, in his own behalf and in behalf of others, held the individual appeal of the party taking it. — *In re* Park Ave. Viaduct Assessment, 78 N. Y. Supp. 1030.

8. APPEAL AND ERROR — Assignment of Error.—An appellant will not be heard in respect to the assignments of error in which he has no concern. — French v. Commercial Nat. Bank, Ill., 65 N. E. Rep. 252.

9. APPEAL AND ERROR — General Verdict. — A general verdict is supported by the presumption that all the issues of fact essential to support it were found by the jury in favor of the party for whom it was returned. — Eklund v. Martin, Minn., 92 N. W. Rep. 406.

10. APPEAL AND ERROR — Harmless Error. — On a trial before the court, inadmissible, but important, evidence received over objection will be presumed to have been disregarded by the court, and the error is presumptively harmless.—Cobban v. Hecklen, Mont., 70 Pac. Rep. 805.

11. APPEAL AND ERROR — Harmless Error. — When the undisputed facts entitle the successful party to the direction of a verdict, error in instructions is without prejudice. — Columbus State Bank v. Carrig, Neb., 92 N. W. Rep. 324.

12. APPEAL AND ERROR — Oral Instruction. — A judge's statement as to what the instructions to the jury were when orally given held binding on the court on appeal.—Justice v. Gallert, N. Car., 42 S. E. Rep. 850.

13. APPEAL AND ERROR — Prejudicial Error. — A case must be reversed for prejudicial error of law occurring on a jury trial, though the court think it correctly decided on the facts in evidence. — McNicol v. Collins, Wash., 70 Pac. Rep. 753.

14. APPEAL AND ERROR — Record's Failure to Show Facts. — Where the record fails to show facts which are essential to enable the appellate court to safely decide the cause, it will reverse the decree on its own motion and remand the case for a rehearing.—Barber v. Coit, U. S. C. C. of App., Sixth Circuit, 118 Fed. Rep. 272.

15. APPEAL AND ERROR — Redocket. — Where a case is improperly brought up on appeal, it will be entered as pending on error on appellant's application. — Colorado Fuel & Iron Co. v. Knudson, Colo., 70 Pac. Rep. 698.

16. APPEAL AND ERROR — Review.—The supreme court will not consider an account of over 1,000 items to discover any error, where its attention has not been called to any particular erroneous charges.—*In re* Hart's Estate, Pa., 53 Alt. Rep. 369.

17. APPEAL AND ERROR—Time for Perfecting Appeal.— The time for perfecting an appeal in equitable actions begins to run at the date on which the final decree is entered of record. — Hall v. Moore, Neb., 96 N. W. Rep. Rep. 294.

18. ATTACHMENT—Defective Warrant.—The recital in a warrant of attachment that the action is for wrongful detention, while the complaint is for conversion, held a mere irregularity.— Rallings v. McDonald. 79 N. Y. Supp. 1040.

19. ATTORNEY AND CLIENT — License Tax. — A license tax on attorneys, imposed by a municipality pursuant to St. 1883, p. 93, § 852, subd. 10, held unauthorized as a regulation of the business or profession of the practice of law —City of Sonora v. Curtin, Cal., 70 Pac. Rep. 674.

20. BAILMENT — Proprietor of Bathhouse. — The proprietor of a bathhouse held a bailee for hire of valuables deposited with it.—Sulpho-Saline Bath Co. v. Allen, Neb., 92 N. W. Rep. 354.

21. BANKRUPTCY —Exemptions.—An order of the bankruptcy court setting aside real estate to bankrupt as exempt held equivalent to a judgment that a general judgment was not a lien on it.—Smalley v. Laugenour, Wash. 70 Pac. Rep. 786.

22. BANKRUPTCY — Exempt Property. — The fact that under the law of the state property set apart to a bankrupt as exempt is not exempt as against the claim of one creditor does not entitle such creditor to an order requiring the trustee to take possession and sell such property for his benefit. — *In re* Seydel, U. S. D. C., N. D. Iowa, 118 Fed. Rep. 207.

23. BANKRUPTCY—Homestead.—The right of a bankrupt to an exemption of the proceeds of his homestead, sold prior to his bankruptcy, determined under the Iowa statute. — *In re* Johnson, U. S. D. C., N. D. Iowa, 118 Fed. Rep. 312.

24. BANKRUPTCY—Jurisdiction.—A court of bankruptcy is without jurisdiction to adjudge a person an involuntary bankrupt who was, both at the time of the filing of the petition and at the time of the alleged act of bankruptcy, a wage earner working for a salary of less than $1,500 per year. — *In re* Pilger, U. S. D. C., E. D. Wis., 118 Fed. Rep. 206.

25. BANKRUPTCY — Personal Liability. — Under Bankr. Act 1898, § 70, U. S. Comp. St. 1901, p. 3451, a cause of action which would pass to the personal representative of the plaintiff will pass to his trustee in bankruptcy. — Cleland v. Anderson, Neb., 92 N. W. Rep. 306.

26. BANKRUPTCY—Preferences.—A creditor whose debt was all created by the sale of goods to the bankrupt from time to time within four months prior to the debtor's bankruptcy, without knowledge of his insolvency, is not chargeable with having received preferences because of payments received during the same time. — Jaquith v. Alden, U. S. D. C. of App., First Circuit, 118 Fed. Rep. 270.

27. BANKRUPTCY—Signing and Verification by Attorney.

—The attorney of a creditor may sign his client's name to a petition in involuntary bankruptcy, and may verify the same where he is shown to have knowledge of the facts stated therein. — *In re* Hunt, U. S. D. C., 118 Fed. Rep. 282.

28. BANKRUPTCY — Valuation of Credits.—In determining the question of the insolvency of an alleged bankrupt, his credits must be estimated at their actual, and not their nominal, value, where their collectibility is doubtful. — *In re* Coddington, U. S. D. C., M. D. Pa., 118 Fed. Rep. 281.

29. BENEFIT SOCIETIES — Delinquent Sick Members. — A by-law of a fraternal association providing that a sick member may have his dues paid during the continuance of his sickness, if it has not originated from intemperance or vicious conduct, on written notice, is mandatory. — Bost v. Supreme Council Royal Arcanum, Minn., 92 N. W. Rep. 337.

30. BILLS AND NOTES — Assignment. — Where a note payable to order is transferred without indorsement, the transferee must aver and prove the assignment. — Baker v. Warner, S. Dak., 92 N. W. Rep. 393.

31. BILLS AND NOTES — Bona Fide Holder. — A note transferred to secure a pre-existing debt in consideration of an extension of the time of payment of the debt makes the transferee a *bona fide* holder.—Prim v. Hammel, Ala. 32 So. Rep. 1006.

32. BILLS AND NOTES — Certificate of Deposit. — A certificate of deposit issued by a trust company is not a negotiable instrument within Laws 1897, ch. 612, § 20.—Zander v. New York Security & Trust Co., 78 N. Y. Supp. 960.

33. BILLS AND NOTES — Co-maker. — A person who, at request of a debtor, signed his note on the back, held a co-maker.—Pearl v. Cortright, Miss., 33 So. Rep. 72.

34. BILLS AND NOTES — Fraud in Procurement.—Where a note was induced by fraud, subsequent renewals thereof are open to the same defense. — Adams v. Ashman, Pa., 53 Atl. Rep. 375.

35. BILLS AND NOTES — Ownership. — Possession of a promissory note is *prima facie* evidence of its ownership. — Michigan Mut. Life Ins. Co. v. Klatt, Neb., 92 N. W, Rep. 325.

36. BOUNDARIES — Block of Surveys. — Where one of a block of several tracts may be located by adjoiner, it is sufficient, though none of the inferior lines can be found. Lehigh Val. Coal Co. v. Beaver Lumber Co., Pa., 53 Atl. Rep. 379.

37. BOUNDARIES— Dedication Plat. — Though a plat is ineffectual as a statutory dedication of the streets and alleys appearing therein, a sale of a lot described with reference to the plat passes the title to the center of the street in front of the lot.— Thompson v. Maloney, Ill., 65 N. E. Rep. 236.

38. BOUNDARIES—Government Surveys. — The government surveys of public lands are conclusive on all persons holding land in reference thereto. — Trinwith v. Smith, Oreg., 70 Pac. Rep. 816.

39. BROKERS — Commissions. — Where an agent employed to sell realty procures a purchaser ready to make a binding contract on the seller's terms, the agent is entitled to his compensation. — Ross v. Smiley, Colo., 70 Pac. Rep. 766.

40. BROKERS—Commissions.—In an action to recover commission for sale of real estate, conversations between plaintiff and the proposed purchaser, in the absence of defendant, are incompetent. — Rutherford v. Simpson, Minn., 92 N. W. Rep. 413.

41. BROKERS—Commissions.—In an action for commissions on a sale of real estate, held, that defendant could show the influence of other agents exerted on the sale before and after the contract with plaintiff. — Smiley v. Bradley, Colo., 70 Pac. Rep. 696.

42. BROKERS—Commissions.—Real estate broker selling without written authority cannot recover commissions. —Whiteley v. Terrey, 78 N. Y. Supp. 911.

43. BUILDING AND LOAN ASSOCIATIONS—Insolvency.—Borrowing member of building association in voluntary liquidation held not entitled to credit for dues paid on stock.—People's Building & Loan Assn. v. McPhillamy, Miss., 32 So. Rep. 1001.

44. BUILDING AND LOAN ASSOCIATIONS — Ultra Vires.—Though a contract of a building and loan association, receiving a deposit and agreeing to pay interest thereon, be *ultra vires*, it is liable for the money, with interest, however, only from the time payment is demanded.—Brennan v. Gallagher, Ill., 65 N. E. Rep. 227.

45. BURGLARY — Entry. — Where one party breaks a a window and takes out provisions, etc., and hands them to a companion, both commit burglary.—State v. Boysen, Wash., 70 Pac. Rep. 740.

46. CARRIERS—Burden of Proof.—While an action by a passenger for an injury received while being carried by the defendant, the burden of proof of negligence on the part of defendant, as the cause of the injury, is upon the plaintiff, this burden is changed by showing that the accident causing the injury occurred while the plaintiff was a passenger.— City & Surburban Railway Company v. Hedwig E. Svedborg, Dist of Col. App., 30 Wash. Law Rep. 808.

47. CARRIERS — Election of Passenger. — In action against street railroad for ejection of a passenger, it was error to instruct that if the coin rendered as fare were legal tender plaintiff could recover.—Mobile St. Ry Co. v. Watters, Ala., 33 So. Rep. 42.

48. CARRIERS—Misdelivery of Goods. — Transportation company held liable for mistake of railroad company's agent in forwarding shipment consigned in transportation company's car and carried over railroad company's line.—Richer v. Fargo, 78 N. Y. Supp. 1007.

49. CARRIERS—Private Spur Tracks. — A railroad company is under no legal obligation to construct a spur track from its line to a coal mine for the private benefit of the owner in shipping his product. —Harp v. Choctaw, O. & G. Ry. Co., U. S. C. C., W. D. Ark., 118 Fed. Rep. 169.

50. CARRIERS — Stipulation Against Liability for Negligence in Free Pass. —A condition in a free pass issued by a railway company by which the party accepting and using it assumes all risk of accident and damage to person or property, whether caused by negligence of the company's agents or otherwise, is valid and binding on the person accepting and using the pass, and precludes a recovery by such person for an injury caused by the negligence of the company's agents. — John D. Boering v. Chesapeake Beach Railway Company, Dist. of Col. App., 30 Wash. Law Rep. 742.

51. CARRIERS—Waiver of Common-Law Liability.—Passengers traveling on a reduced rate ticket held bound to affirmatively prove negligence on the part of the carrier. —Crary v. Lehigh Val. R. Co., Pa., 53 Atl. Rep. 363.

52. CERTIORARI—Entry on Minutes.—Failure to enter a *certiorari* on the minutes of the court does not invalidate the writ.—People v. Stillings, 78 N. Y. Supp. 942.

53. COMMERCE—License Tax upon Foreign Brewery.—The act of congress requiring brewers and brewers' agents, to pay a license tax of $250 per annum, does not apply to a local agent of a foreign brewing company having no place for selling goods in this district, who merely solicits orders for the company's product from local dealers, which orders are filled at the brewery in New York and the goods shipped from there direct to the purchaser.—Albert E. Beitzell v. The District of Columbia, Dist. of Col. App., 31 Wash. Law Rep. 82.

54. CONSTITUTIONAL LAW — Impairment of Contract Obligation.—Where the charter of a corporation exempts its property from taxation, any act or constitutional provision subjecting the property to taxation held violative of Const. U. S. art. 1, § 10. — State v. Alabama Bible Soc., Ala., 32 So. Rep. 1011.

55. CONSTITUTIONAL LAW — Police Power. — An ordinance requiring a street railway company to clean between its tracks streets occupied by it held not invalid as impairing the obligation of contract. — City of Chicago v. Chicago Union Traction Co., Ill., 65 N. E. Rep. 243.

56. CONSTITUTIONAL LAW—Property Rights.—A citizen and resident of one state has the constitutional right to engage in business or to hold property in another state, and he does not thereby waive the right to object to the constitutionality of a statute of the latter state subjecting nonresidents who engage in business therein to judgments without personal service of process.—Moredock v. Kirby, U. S. C. C., N. D. Ky., 118 Fed. Rep. 180.

57. CONSTITUTIONAL LAW — Rules for Forest Reservations.—The authority given the secretary of the interior by Act June 4, 1897, to make rules for forest reservations, held not unconstitutional as delegation of legislative authority.—United States v. Destervignes, U. S. C. C., N. D. Cal., 118 Fed. Rep. 199.

58. CONTRACTS—Agreement to Restrain Prosecution.—A promise to pay for property stolen by another, in consideration of the owners refraining to prosecute, held an illegal agreement.— Giles v. De Cow, Colo., 70 Pac. Rep. 681.

59. CONTRACTS— Beneficiaries of Bond. — Laborers and materialmen held beneficiaries to a contractor's bond, and hence proper authorities to a suit to enforce the same. — Town of Gastonia v. McEntee-Peterson Engineering Co., N. Car., 42 S. E. Rep. 858.

60. CONTRACTS—Breach.— A passive violation of a contract cannot be taken advantage of without allegation and proof of the things not done.—City of Alexandria v. Morgan's Louisiana & T. R. & S. S. Co., La., 33 So. Rep. 65.

61. CONTRACTS—Sale of Land.— A contract to sell one acre out of a larger tract of land is definite and certain, after the purchaser has selected and gone into possession of one acre of such tract. — Cobbad v. Hecklen, Mont., 60 Pac. Rep. 805.

62. CONTRACTS—Validity.—A contract whereby certain stockholders in a bank agreed that a third party should be elected cashier, etc., held not void as against public policy.—Bonta v. Gridley, 78 N. Y. Supp. 961.

63. CORPORATIONS—Estoppel. —A debtor of a corporation, who transacted business with it as such, cannot deny its corporate existence to defeat the jurisdiction of a federal court in an action to recover the debt.—W. L. Wells Co. v. Avon Mills, U. S. C. C., W. D. N. Car., 118 Fed. Rep. 190.

64. CORPORATIONS—Insolvency.— Interest not allowed after appointment of receiver for insolvent corporation as between preferred and unpreferred creditors.— People v. American Loan & Trust Co., N. Y., 65 N. E. Rep. 200.

65. COUNTIES—Action on County Warrants.—No right of action accrues on county warrants until there is money in the fund on which they are drawn or the authorities have neglected to provide funds to pay them.—Bacon v. County of Dawes, Neb., 92 N. W. Rep. 313.

66. COUNTIES—Tax Payee's Action.— A tax-payer held not required to show special injury in order to entitle him to join illegal county expenditures.—Rogers v. Board of Supr. of Winchester County, 78 N. Y. Supp. 1081.

67. COURTS—Quo Warranto—The remedy by *quo warranto* in the supreme court is not a matter of strict right, available to a private relator, but rests in the sound discretion of the court. — State v. McLean County, N. Dak., 92 N. W. Rep. 385.

68. CRIMINAL EVIDENCE—Beer as an Intoxicant. — The court will take judicial notice that beer is an intoxicant. —Sothman v. State, Neb., 92 N. W. Rep. 303.

69. CRIMINAL LAW—Conviction on Our Count as an Acquittal on Others.—Where an indictment charged embezzlement and larceny in separate counts, a conviction of larceny only held not an acquittal on the charge of embezzlement.—State v. Balsley, Ind., 65 N. E. Rep. 185.

70 CRIMINAL LAW — Conviction on Testimony of Confederates. — It is the better rule that a jury should not convict on the unsupported testimony of a participant in the same crime. — State v. Freedman, Del., 53 Atl. Rep. 356.

71. CRIMINAL TRIAL—Conviction of Crime. — It is not proper for the prosecuting attorney to assert his personal conviction of the guilt of the accused, unless such conviction is derived solely from the evidence.—Reed v. State, Neb., 92 N. W. Rep. 321.

72. CRIMINAL TRIAL—Remarks by Prosecuting Attorney.—Where the prosecuting attorney unintentionally misstated the law to the jury in reference to depositions, but no objection was made, the objection cannot be urged on appeal. — State v. Fenton, Wash., 70 Pac. Rep. 741.

73. DAMAGES — Disease Augmenting Injury.—Plaintiff, suffering from a disease augmented by injury from a defective sidewalk, was entitled to recover against the city for the whole injury. — Jordon v. City of Seattle, Wash., 70 Pac. Rep. 742.

74. DAMAGES—Dynamite Blasts.—In an action for damages to a building, owing to the discharge of dynamite blasts in excavating, the measure of damages is the cost of placing the building in as good condition as before the damage. — Fitzsimmons & Connell Co. v. Braun, Ill., 65 N. E. Rep. 249.

75. DEATH—Commencement of Action.—Within the act giving an action for wrongful death, limiting such actions to those commenced within 12 months after the death, an action is commenced when process is put in the hands of the sheriff to be served.—County v. Pacific Coast Borax Co., N. J., 53 Atl. Rep. 386.

76. DEDICATION—Acceptance by Authorities.—Acceptance of an implied offer to dedicate land to public use held properly accomplished for the public when the municipal authorities take possession of the land.—Town of Manitou v. International Trust Co., Colo., 70 Pac. Rep. 757.

77. DEEDS — Construction. — A grant to a son for his natural life, and on his death to his children or heirs, vests a fee in the son.—Shapley v. Diehl, Pa., 53 Atl. Rep. 374.

78. DEPOSITIONS – Motion to Suppress.—An objection to a deposition on the ground of irregularity in taking must be taken by a motion to suppress, made before the trial. —Samuel Bros. & Co. v. Hostetter Co., U. S. C. C. of App., Ninth Circuit, 118 Fed. Rep. 257.

79. DISTRICT AND PROSECUTING ATTORNEY—Misappropriating Public Funds. — The county attorney is the proper officer to bring an action triable within the county to prevent public officers from misappropriating public funds. — Board of Education of Territory v. Territory, Okla., 70 Pac. Rep. 792.

80. DIVORCE—Insane Defendant. — In a proceeding for divorce on the ground of wilful desertion and abandonment, the time during which the defendant has been found to be insane cannot be included in computing the statutory period of desertion required to entitle the petitioner to a divorce. — Elwood B. Blandy v. Clara A. Blandy, Dist. of Col. App., 30 Wash. Rep. 808.

81. EJECTMENT — Right of Mortgagor to Maintain Action.—The title of the trustee in a conveyance by way of mortgage or deed in trust to secure the discharge of an obligation recited therein is limited solely to the use and benefit of the mortgagee and those in privity with him; and consequently, a stranger or third person, when sued in ejectment by the mortgagor, cannot set up such mortgage or conveyance in trust as a bar to recovery by the plaintiff.—Joseph M. Smith v. James A. Sullivan, Dist. of Col. App., 31 Wash. Rep. 2.

82. EJECTMENT — Tax Sale.—A defendant in ejectment cannot show that plaintiff, purchaser at a tax sale, was incapacitated to purchase.—Graham v. Warren, Miss., 33 So. Rep. 71.

83. ELECTION OF REMEDIES—Insolvency of Vendee.— Where the vendee in an executory contract of sale becomes insolvent before the delivery, the vendor, in electing his remedy, is not required to consult the interests of the vendee. — Pratt v. S. Freeman & Sons Mfg. Co., Wis., 92 N. W. Rep. 368.

84. EQUITY — Jurisdiction. — When equity has taken jurisdiction of a suit by the heirs of a decedent to test the

validity of an assignment of a mortgage by her, it will retain jurisdiction for the purpose of deciding all questions in controversy. — Snyder v. Snyder, Mich., 91 N. W. Rep. 353.

85. ESTOPPEL — Consideration.—Party executing notes to a national bank, to make it appear that the bank had not loaned money in violation of the national banking act, held estopped to assert that they were without consideration.—Murphy v, Gumaer, Colo., 70 Pac. Rep. 800.

86. ESTOPPEL — Deed as Mortgage. — One held not estopped by her silence to assert a deed to be a mortgage, as against one who with knowledge thereof took a quitclaim from the mortgagee. — State v. Mellette, S. Dak., 92 N. W. Rep. 395.

87. ESTOPPEL—Lease.—Where plaintiffs, as executrices, leased premises to defendants, they were estopped from denying the title of plaintiffs or their right to enforce the lease in the capacity in which they executed it.—Steele v. R. M. Gilmour Mfg. Co., 78 N. Y. Supp. 1078.

88. ESTOPPEL—Public Policy. — Stockholders in bank, after enjoying for four years benefits of contract whereby they had agreed that a third party should be elected cashier, held estopped to urge that it was void as against public policy.—Bonta v. Gridley, 78 N. Y. Supp. 961.

89. ESTOPPEL—Voluntary Payment.—The silence of one party does not operate as an estoppel in favor of another, unless it appear that such other party has changed his position to his injury.—Columbus State Bank v. Carrig, Neb., 92 N. W. Rep. 324.

90. EVIDENCE—Admissions.—Statement of a third person in plaintiff's presence to a physician, while plaintiff was suffering from a severe shock, held not admissible against her, because not contradicted. — Schilling v. Union Ry. Co., 78 N. Y. Supp. 1015.

91. EVIDENCE — Cancellation.—Testimony of expert as to identity of person making marks cancelling signature to a will with the person signing the will held inadmissible, under Laws 1880, ch. 36, and Laws, 1888 ch. 555.—*In re* Hopkins' Will, N. Y., 65 N. E. Rep. 173.

92. EVIDENCE — Expert Opinion.—A hypothetical case calling for an expert opinion should be limited, not only to facts in evidence, but to those necessary to the forming of an opinion. — Birmingham Ry. & Electric Co. v. Butler, Ala, 33 So. Rep. 33.

93. EVIDENCE—Judicial Notice.—Courts will take judicial notice that dynamite is intrinsically dangerous.—Fitzsimons & Connell Co. v. Braun, Ill., 65 N. E. Rep. 249.

94. EVIDENCE—Judicial Notice. — The courts will take judicial knowledge of the time of the rising and the setting of the sun on any given day.—Montenes v. Metropolitan Ry. Co., 78 N. Y. Supp. 1059.

95. EVIDENCE—Opinion.—Testimony that in the opinion of the witness a train was running at four or five miles per hour is competent.—Atlanta, K. & N. Ry. Co. v. Strickland, Ga., 42 S. E. Rep. 864.

96. EVIDENCE — Proving Debts.—Testimony as to indebtedness, not from witness' knowledge, but from his examination of the creditor's books, which he did not keep, held incompetent. — Kornegay v. May, Ala., 33 So. Rep. 36.

97. EVIDENCE—Res Gestae.—A declaration of a servant scalded by falling into a vat of heated liquor, immediately after escaping from the vat and running to engine room 60 or 70 feet distant, held admissible as *res gertæ*.—Scheir v. Quirin, 78 N. Y. Supp 956.

98. EVIDENCE—Unlawful Combinations.—Evidence of acts and declarations of persons alleged to have been engaged in an unlawful combination is admissible to show the existence and extent of the combination.—Cleland v. Anderson, Neb., 92 N. W. Rep. 306.

99. EXECUTORS AND ADMINISTRATORS—Application to Sell Lands.—The heirs having pleaded the statute of non-claims to the petition of the administrator to sell lands to pay debts, he has the burden of proving due filing or presentment of the claims.—Kornegay v. Mayer, Ala., 86 So. Rep. 33.

100. EXECUTORS AND ADMINISTRATORS—De Bonis Non.—Where application for letters *de bonis non* showed the applicant had been former administrator, and that his final account had been approved, but did not show his discharge, an appointment was not invalid.—Henley v. Johnson, Ala., 32 So. Rep. 1009.

101. EXECUTORS AND ADMINISTRATORS. — Failure to Allege Representative Capacity. — Where plaintiff sues individually and as executrix, the failure of the complaint to allege that she is executrix is not fatal.—Steel v. R. M. Gilmour Mfg. Co., 78 N. Y. Supp. 1078.

102. EXECUTORS AND ADMINISTRATORS— Necessity of Administration.—There being no creditors, money of decedent may be disposed of as agreed by the heirs, without any administration.— Waterhouse v. Churchill, Colo., 70 Pac. Rep. 678.

103. EXECUTORS AND ADMINISTRATORS— Restitution of Property. — On reversal of judgment, administratrix of judgment debtor held not estopped to assert her right to restitution of the property sold thereunder. — Black v. Vermont Marble Co., Cal., 70 Pac. Rep. 776.

104. EXPLOSIVES—Negligence.— A contractor, excavating for a city, held liable for injuries to buildings, owing to the concussion of the air or the earth, caused by his discharging dynamite blasts. — Fitzsimons & Connell Co. v. Braun, Ill., 65 N. E. Rep. 249.

105. EXTRADITION— Scope of Treaty with Great Britain.—The territory of the South African Republic was not a part of the dominions of Great Brittain, prior to the proclamation of Lord Roberts of 1900 making it a British colony, in such sense as to bring it within the purview of the extradition treaty of 1889 between Great Britain and the United States.—*In re* Taylor, U. S. D. C., D. Mass., 118 Fed. Rep. 196.

106. FIRE INSURANCE—Liability of Brokers for Negligence. — Brokers obtaining insurance for others are bound to exercise reasonable care and skill in making inquiries and obtaining information as to the responsibility of the insurer with whom they place the risk and are liable for any loss occasioned by the want of such care.—Mallery v. Frye, Dist. of Col. App., 31 Wash. Law Rep. 63.

107. FRAUDS, STATUTE OF — Oral Contract.—An oral contract for the sale of an interest in real property, though unenforceable, is not void, and the purchaser cannot recover a partial payment made thereon as earnest money, if the vendor is ready, willing and able to perform on his part.—York v. Washburn U. S. C. C., D. Minn., 118 Fed. Rep. 316.

108. FRAUDULENT CONVEYANCES—Ejectment.— A creditor can compel property fraudulently transferred by his debtor to be sold on execution, and maintain ejectment to recover possession, on showing that the transfer was fraudulent as to him.—Brasie v. Minneapolis Brewing Co., Minn., 92 N. W. Rep 340.

109. GAMING—Aleatory Contract.—An agreement stipulating a sale of all oranges "my trees may produce in the years 1899, 1900," is not an aleatory contract, within Civ. Code, art. 1776.—Losecco v. Gregory, La., 32 So. Rep. 985.

110. HEALTH—Contageous Diseases. — A county is liable under Laws 1902, ch. 29, for necessary additional salary paid by a city to the local health inspector for extra services in locating and controlling contagious diseases.—City of Mankato v. Blue Earth County, Minn., 92 N. W. Rep 405.

111. HIGHWAYS—Contributory Negligence.—One held not guilty of contributory negligence as matter of law in driving over a mudhole in a highway, into which the forward wheels sink, throwing him from the wagon.— Hunt v. Lincoln, Tp., Mich., 92 N. W. Rep. 288.

112. HOMICIDE—Evidence.—In a prosecution for wife murder, accused's threat to get divorce held improperly admitted.—Raines v. State, Miss., 33 So. Rep. 19.

113. HOMICIDE—Self-Defense.— Where self-defense is pleaded in a murder prosecution, negative evidence of the good reputation of the deceased for peaceableness is

properly received. — People v. Adams, Cal., 70 Pac. Rep. 662.

114. HOMICIDE—Shooting Wrong Person.—Defendant, shooting at one person and killing another, is guilty as he would have been had he killed the one at whom he shot.—State v. Brown, Dela., 52 Atl. Rep. 354.

115. HUSBAND AND WIFE – Suretyship. — Whether or not a married woman is surety or principal on a note is to be determined from the inquiry as to whether she received the consideration in person or in benefit to her estate.—Guy v. Liberenz, Ind., 65 N. E. Rep. 186.

116. ICY CONDITION OF SIDEWALK —Municipal Corporations.—A municipal corporation is responsible for injuries sustained by one who, slips upon a bed of ice, covering part of a sidewalk, which was the result of a flow of water from abutting premises. — Dist. of Col. v. Frazer, Dist. of Col. App., 31 Wash. Law Rep. 83.

117. INDICTMENT AND INFORMATION — Pleading.— By pleading to the merits, defendant in a criminal case waives his right to move to quash and to demur to the indictment.—Oakley v. State, Ala., 33 So. Rep. 23.

118. INTOXICATING LIQUORS — Government License.— In a prosecution for selling liquors in violation of a state statute, that defendant kept a government license may be received as tending to show that defendant was engaged in the business of selling liquors, and for no other purpose.—Frudie v. State, Neb., 92 N. W. Rep. 320.

119. JUDGMENT—Default.—The failure of the clerk to make the entry of rule to plead after the filing of the narr. held no ground for striking judgment for plaintiff entered after defendant's default.— Acklen v. Fink, Md., 53 Atl. Rep. 423.

120. JUDGMENT — Interpleader. — A decree of interpleader will conclude a defendant thereto as to the fund in controversy, though his right to sue at law on his claim is not enjoined. — McMurray v. Sisters of Charity of St. Elizabeth, N. J., 53 Atl. Rep. 389.

121. JURY—Abatement of Nuisance.—Where, pending suit to restrain a nuisance to leasehold, the lease expires, the suit becomes an action for damages, entitling defendant to jury trial.—McNulty v. Mt. Morris Electric Light Co., N. Y., 65 N. E. Rep. 196.

122. LANDLORD AND TENANT — Surrender of Lease.— Where the minds of the parties to a lease united in an intent to relinquish it, held, there arose a surrender by act and operation of law.—Dennis v. Miller, N. J., 53 Atl. Rep. 394.

123. LARCENY—Conviction of Crime.—In a prosecution for larceny, it is not necessary that the jury should in their verdict fix the value of the money stolen.—Reed v. State, Neb., 92 N. W. Rep. 321.

124. LARCENY — Felonious Intent. — The felonious intent necessary to constitute larceny may be proved by the circumstances surrounding the taking. — State v. Palmer, Dela., 53 Atl. Rep. 359.

125. LEASE — Forfeiture for Nonpayment of Taxes.— Where the payment of taxes enters into the rental consideration of the lease, equity will relieve from forfeiture for the nonpayment of taxes equally with forfeiture for the nonpayment of rent as such.—Webb v. King, Dist. of Col. App., 31 Wash. Law Rep. 79.

126. LICENSES—Millinery Establishments. — A statute authorizing a city to levy license taxes on the business of millinery establishments held not to authorize the levy of a license tax on one selling hats, ribbons, etc., but who did not trim any hats.— City of Tuscaloosa v. Holczstein, Ala., 32 So. Rep. 1007.

127. LICENSES— Tax on Attorneys. — A provision of an ordinance creating a remedy to collect a license tax is repealed by the repeal of the provision imposing the tax. —City of Sonora v. Curtin, Cal., 70 Pac. Rep. 674.

128. LIFE INSURANCE— Noncontestability.—Noncontestable clause in a policy, applying after two years, held not to prevent a forfeiture for nonpayment of the premium.—Schmertz v. United States Life Ins. Co., U. S. C. C. of App., Third Circuit, 118 Fed. Rep. 250.

129. LIMITATION OF ACTIONS — Demand after Date.— Where a note is payable on demand, "after date," limitations do not commence to run until the day after date.— Hardon v. Dixon, 78 N. Y. Supp. 1061.

130. MALICIOUS PROSECUTION—Damages.—In an action for malicious prosecution, it is competent to show defendant's financial standing and ability to respond to Judgment.—Lord v. Guyot, Colo., 70 Pac. Rep. 683.

131. MASTER AND SERVANT — Coal Mines. — Coal mine operators held liable for death of miner from insufficient ventilation, though the act of a fellow-servant concurred with theirs in the result.— Czarecki v. Seattle & S. F. Ry. & Nav. Co., Wash., 70 Pac. Rep. 750.

132. MASTER AND SERVANT — Compensation of Stenographer.—A stenographer employed to take testimony at trial held entitled to recover for attending on occasions when adjournment was taken. —Hendrickson v. Woods, 78 N. Y. Supp. 949.

133. MASTER AND SERVANT—Defective Scaffold.—Where a scaffold is necessary to sustain workmen and a heavy pipe to be put in place, there is an implied agreement that the same is reasonably safe for that purpose.—Hagerty v. Evans, Minn., 92 N. W. Rep. 399.

134. MASTER AND SERVANT — Mail Cranes. — A railroad company owes no duty to a locomotive fireman, familiar with the road, to place lights on mail cranes. — Kenney v. Meddaugh, U. S. C. C. of App., Sixth Circuit, 118 Fed. Rep. 209.

135. MASTER AND SERVANT — Negligence of Fellow-Servant.—A complaint alleging that plaintiff was injured while unloading logs from a flat car by the negligence of his fellow-servants held to state no cause of action.— Boyer v. Eastern Ry. Co. of Minnesota, Minn., 92 N. W. Rep. 326.

136. MASTER AND SERVANT — Negligence to Third Person. — Negligence of a bell boy in a hotel in permitting a bath tub to overflow and injure plaintiff's goods in a store below held to have occurred while the boy was acting within the scope of his duties.—Steele v. May, Ala., 33 So. Rep. 30.

137. MECHANICS' LIENS — Personal Judgment.—Where, in an action to foreclose a mechanic's lien, plaintiff fails to show a valid lien, he cannot, on the same complaint, and without amendment, have a personal judgment for the debt.—Castelli v. Trahan, 78 N. Y. Supp. 950.

138. MINES AND MINERALS — Innocent Purchaser. — Grantee of a mining claim having notice of an adverse claim is not an innocent purchaser for value. — Wetzstein v. Largey, Mont., 70 Pac. Rep. 717.

139. MONOPOLIES — Anti-trust Law.—To render a combination unlawful under the anti-trust act of 1890, U. S. Comp. St. 1901, p. 3200, it need not be one which by its terms refers to interstate commerce; but it is sufficient if its purpose and effect are necessarily to restrain interstate trade.—Gibbs v. McNeeley, U. S. C. C. of App., Ninth Circuit, 118 Fed. Rep. 120.

140. MONOPOLIES — Personal Liability. — Under Comp. St. 1901, ch. 91a, § 11, a lumber dealer, injured by an unlawful combination, may bring an action against members of the association personally, or any one or any number of them, to recover his damages. — Cleland v. Anderson, Neb., 92 N. W. Rep. 306.

141. MORTGAGES — Deed to Land. — Where a deed is a mortgage, to the knowledge of one who takes an assignment of the note and a quitclaim from the mortgagee, he gets merely a lien as incident to the note, under Comp. Laws, § 3243. — State v. Mellette, S. Dak., 92 N. W. Rep. 395.

142. MORTGAGES — Default in Interest on Note. — A clause in a note that a 30-day default in the payment of the interest should render the whole debt due held not void. — First Nat. Bank v. Citizens' State Bank, Wyo., 70 Pac. Rep. 726.

143. MUNICIPAL CORPORATIONS—Defective Sidewalk.— It was not competent to ask a plaintiff if she did not know that by a certain indirect route she could have avoided the defective sidewalk on which she was injured,

as she had the right to travel the most direct course.—Jordan v. City of Seattle, Wash., 70 Pac. Rep. 743.

144. MUNICIPAL CORPORATIONS — Defective Sidewalks.—Where obvious defects in a sidewalk had continued for more than 20 days, the question whether a sufficient time had elapsed to impose on the authorities the duty to repair was for the jury. — Ljunberg v. Village of North Mankato, Minn., 92 N. W. Rep. 401.

145. MUNICIPAL CORPORATIONS — Liabilities. — A city is not liable for the acts of a board for the inspection of buildings by ratification, where the matters involved are expressly confided to such board by the charter.—Murray v. City of Omaha, Neb., 92 N. W. Rep. 299.

146. MUNICIPAL CORPORATIONS — Police Power. — An ordinance requiring a street railway company to clean streets held not an unreasonable exercise of police power. — City of Chicago v. Chicago Union Traction Co., Ill., 65 N. E. Rep. 243.

147. MUNICIPAL CORPORATIONS — Town Trustees. — A member of the board of trustees of a town is entitled to vote, though he has been elected mayor *pro tem.* and there is no tie.—Harris v. People, Colo., 70 Pac. Rep. 699.

148. NAVIGABLE WATERS—Riparian Owner.—A riparian owner on a river is entitled to the land made by accretion or reliction in front of his property and contiguous thereto according to his shore line. — Widdicombe v. Rosemiller, U. S. C. C., W. D. Mo., 118 Fed. Rep. 295.

149. NEGLIGENCE—Failure to Anticipate.—One may be guilty of contributory negligence in failing to anticipate and act upon the contingency of another's negligence.—Erie R. Co. v. Kane, U. S. C. C. of App., Sixth Circuit, 118 Fed. Rep 223.

150. NEGLIGENCE — Runaway. — Expressman injured in runaway held not guilty of negligence as matter of law in failing to hitch his horses. — Lochrain v. Autophone Co., 78 N. Y. Supp. 919.

151. OFFICERS — Bond Liable as an Insurer.—The bond of a public officer is liable for money that comes into his hands as an insurer, and not merely for the exercise of good faith.—Smith v. Patton, N. Car., 42 S. E. Rep. 849.

152. OFFICERS — Failure to Take Oath. — Failure of an officer to take the prescribed oath of office will not prevent his becoming an officer *de facto.* — Rosell v. Board of Education of Neptune City, N. J., 53 Atl. Rep. 398.

153. OFFICERS—Invalid Appointment —Where an officer has the power to remove an appointee, and exercises such power by the appointment of a successor, an invalid appointment of such a successor is not a removal of the prior incumbent. — Board of Education of Territory v. Territory, Okla., 70 Pac. Rep. 792.

154. PARDON — Indeterminate Sentence.—Laws 1889, ch. 382, as amended, permitting a prisoner under an indeterminate sentence to be pardoned by a board of commissioners of parole prisoners, is constitutional. — People v. Warden of Sing Sing Prison, 78 N. Y. Supp. 907.

155. PARTITION — Marketable Title. — A purchaser at partition sale held entitled to refuse to complete sale for want of a marketable title; infants, who were necessary parties to the action, having been represented by guardians *ad litem* disqualified under General Rules of Practice 49.—Parish v. Parish, 78 N. Y. Supp. 1089.

156. PAYMENT—Coin Worn by Abrasion.—A coin issued as money held not deprived of the quality of legality, merely by being worn, so long as it is not appreciably diminished in weight. — Mobile St. Ry. Co. v. Watters, Ala., 33 So. Rep. 42.

157. PAYMENT—Duress.—It is not duress so as to render a payment involuntary to institute or threaten to institute a suit. — New Orleans & N. E. R. Co. v. Louisiana Const. & Imp. Co., La., 33 So. Rep. 51.

158. PAYMENT — Mortgages. — That the check was not payable in gold did not render the giving of it ineffectual to redeem the property, where the check was paid in gold.—Hooker v. Burr, Cal., 70 Pac Rep. 778.

159. PENSION — Constitutional Law.—A statute authorizing payment of a pension to a widow of a policeman who died before its enactment held unconstitutional as an appropriation of public moneys to private purposes. —People v. Partridge, N. Y., 65 N. E. Rep. 164.

160. PHYSICIANS AND SURGEONS — Quantum Meruit. — Where, in an action on a *quantum meruit* for a physician's services, there is no conflict in the evidence as to the value of the services, the jury must be guided thereby.—Ladd v. Witte, Wis., 92 N. W. Rep. 365.

161. PRINCIPAL AND SURETY — Release.—A co-maker of a note with a debtor held not released from liability by the payee canceling, as has been agreed, a deed of trust given by the debtor.—Pearl v. Cortright, Miss., 33 So. Rep. 72.

162. PUBLIC LANDS—Cloud on Title—Where the evidence failed to show that the sheriff was threatening to cast a cloud on plaintiff's title, but rather that he refused to issue a deed on a certificate of sale, it failed to establish a cause of action to remove a cloud. — Young v. Hatch, Colo., 70 Pac. Rep. 698.

163. QUO WARRANTO — Municipal Corporations. — *Quo warranto* is the proper remedy where a municipal corporation has been guilty of usurping franchises. — State v. McLean County, N. Dak., 92 N. W. Rep. 385.

164. RAILROADS — Contributory Negligence. — Where the last chance to avoid an accident at a crossing was with the traveler, he was responsible for the accident, notwithstanding the negligence of the railway company.—Barnhill v. Texas & P. Ry. Co., La., 33 So. Rep. 63.

165. RAILROADS — Minor Injured at Crossing. — Where the acts of a minor expose him to peril, which he must have appreciated, and his exposure was without any precaution, it leaves no question for the jury.—Anderson v. Central R. Co. of New Jersey, N. J., 53 Atl. Rep. 891.

166. RAILROADS — Prima Facie Negligence.—A want of knowledge on the part of a railroad of the defective condition of a crossing held *prima facie* negligence.—Wabash R. Co. v. De Hart, Ind., 65 N. E. Rep. 192.

167. RAILROADS—Torpedo on Track.—An engineer who puts a torpedo on the track in close proximity to third persons commits a tort within the scope of his employment. — Euting v. Chicago & N. W. Ry. Co., Wis., 92 N. W. Rep. 358.

168. RAPE — Complaints by Prosecuting Witnesses. — The fact that the prosecuting witness made complaint recently after the commission of the alleged crime is admissible generally as evidence in chief. — George Lyles v. The United States, Dist. of Col. App., 31 Wash. Law Rep. 67.

169. RECEIVERS — Appointment. — An *ex parte* appointment of a receiver to take charge of the estate of a debtor is not one of the means provided by law whereby a creditor may obtain and execute a judgment. — Hutchinson v. Rice, La., 33 So. Rep. 57.

170. RECEIVING STOLEN GOODS—Knowledge.—In order to convict for receiving stolen goods, it is necessary to prove that the property was stolen as laid in the indictment, and that defendant knew at the time he received it that it had been stolen. — State v. Freedman, Dela., 53 Atl. Rep. 356.

171. RECORDS — Res Judicata. — A decision under the Burnt Records Act, Hurd's Rev. St. 1899, p. 1372, as to the ownership of a strip of land, held not binding on the owners of the lots abutting on the strip, who were not parties to the proceedings. — Thompson v. Maloney, Ill., 65 N. E. Rep. 236.

172. REMOVAL of CAUSES — Amendment of Petition.—A petition for the removal of a cause to a federal court cannot be amended in the federal court, where it, or the record, does not show sufficient grounds for removal.—Dinet v. City of Delevan, U. S. C. C., 117 Fed. Rep. 798.

173. REMOVAL OF CAUSES — Decision of State Court.—Decision of the state court denying a petition for intervention held binding on the federal circuit court, on an application by the interveners to remove the cause.—Kidder v. Northwestern Mut. Life Ins. Co., U. S. C. C., E D. Ind., 117 Fed. Rep. 997.

174. REMOVAL OF CAUSES—Local Prejudice. — Foreign corporation domesticated under Laws 1899, ch. 62, held not entitled to remove cause to federal courts on account of local prejudice.—Beach v. Southern Ry. Co., N. Car., 42 S. E. Rep. 856.

175. SALES — Cash on Demand.—A sale of property, nothing being said to the contrary, is presumed to be for cash on delivery.—Pratt v. S. Freeman & Sons Mfg. Co., Wis., 92 N. W. Rep. 368.

176. SALES.—Construction of Contract.—Provision in an order for goods that they are to be fully settled for within ten days held not to necessarily mean paid for.—Toombs v. Stockwell, Mich., 92 N. W. Rep. 288.

177. SALES — Crops to be Grown. — Where, in a contract for an orange crop, the purchaser assumes all risks, the assumption applies to the crop, and not to the trees themselves. — Losecco v. Gregory, La., 32 So. Rep. 985.

178. SALES—Delivery.—Where one sells butter tubs, but is unable to deliver them, delivery of ones equally good is sufficient.—Walker v. Taylor, Dela., 53 Atl. Rep. 357.

179. SEAMEN—Contributory Negligence.—A seaman, injured in a collision, was not chargeable with contributory negligence because he went below for his coat after the danger of collision became imminent. — The Buena Ventura, U. S. D. C., S. D. New York. 117 Fed. Rep. 988.

180. SPECIFIC PERFORMANCE — Mutuality. — Specific performance of a contract to exchange land denied, where there was no mutuality of obligation and remedy. —Tryee v. Dittus, Ill., 65 N. E. Rep. 220.

181. SPECIFIC PERFORMANCE — Statute of Frauds.— Where a woman marries on the promise of the man to convey real estate to her, and he fails to do so, this is such a fraud as will take the case out of the statute of frauds.—Allen v. Moore, Colo., 70 Pac. Rep. 682.

182. STATES—Estoppel.—The legislature having, under Const. art. 3, § 24, no power to release or extinguish a liability to the state, Laws 1897, ch. 84, attempting to do so, is inoperative.—State v. Mellette, S. Dak., 92 N. W. Rep. 395.

183. STREET RAILROADS — Bicycle Accident.—The fact that a street railway accident occurred when one who had been riding a bicycle in dangerous proximity to the track attempted to cross it held not to excuse negligence of the motorman.—Bedell v. Detroit, Y. & A. A. Ry., Mich., 92 N. W. Rep. 349.

184. STREET RAILROADS — Injury to Pedestrian. — A pedestrian, crossing a street railway track behind a car, held guilty of contributory negligence as a matter of law.—Jackson v. Union Ry. Co. of New York City, 78 N. Y. Supp. 1096.

185. STREET RAILROADS — Paving Between Rails.—An ordinance requiring a street railway company to pave between its rails held an assumption of the power of taxation, and not supported as an exercise of the police power. — Fielders v. North Jersey St. Ry. Co., N. J., 53 Atl. Rep. 404.

186. STREET RAILROADS — Rights of Abutter. — An abutter on a highway, owning no part of the fee thereof, cannot complain of the construction of a railroad therein under lawful authority. — Kennedy v. Mineola, H. & F. Traction Co., 78 N. Y. Supp. 937.

187. TAXATION—Illegal Assessment.—Where assessment has been declared illegal and stricken from the rolls, a reassessment held an original assessment requiring notice to the landowner. — Douglas v. Board of Sup'rs of Westchester County, N. Y., 65 N. E. Rep. 162.

188. TAXATION — Inheritance Tax.— Laws 1901, ch. 255, known as the "inheritance tax law," held unconstitutional, as in violation of the provision of the constitution authorizing a levy of an inheritance tax, such tax above any exempted sum to be uniform or graduated or progressive.—State v. Bazille, Minn., 92 N. W. Rep. 415.

189. TAXATION — Sale of Land.—The fact that a portion of the taxes for which lands are sold is illegal does not invalidate the sale, where a portion of such taxes is valid.—Hall v. Moore, Neb., 92 N. W. Rep. 294.

190. TAXATION — Transfer Tax.—Debt on open account due a nonresident decedent from domestic joint-stock association held not subject to transfer tax.—*In re* Horn's Estate, 78 N. Y. Supp. 979.

191. TELEGRAPHS AND TELEPHONES — Failure to Deliver Message. — A telegraph company held liable for mental anguish from failure to deliver message. — Western Union Tel. Co. v. Crocker, Ala., 33 So. Rep. 45.

192. TRIAL—Evidence.—The admission in testimony of lettered exhibits, not offered until after the case has been closed, is within the discretion of the trial judge.— Lord v. Guyot, Colo., 70 Pac. Rep. 683.

193. TRUSTS — Accounting. — A trustee, appropriating the trust estate, must account therefor as of the date of the appropriation.— *In re* Hart's Estate, Pa., 53 Atl. Rep. 67.

194. TRUSTS — Payment of Consideration for Conveyance.—A trust may be raised on a trust, where the two are consistent; and an intention on the part of one who pays the consideration for property which is conveyed to another that it shall be held in trust for third persons, though it may give the latter an enforceable equity, will not defeat a resulting trust in favor of the purchaser arising from payment of the purchase money.—*In re* Peabody, U. S. C. C. of App., First Circuit, 118 Fed. Rep. 266.

195. USE AND OCCUPATION—Rescission of Contract.— One who enters land under an executory agreement to purchase does not thereby become the tenant of his vendor, and cannot be held for use and occupation.—Belger v. Sanchez, Cal., 70 Pac. Rep. 738.

196. USURY—Mortgages.—A purchaser of land incumbered by a usurious building and loan mortgage, which the purchaser assumed and agreed to pay, held not entitled to plead usury and have payments made thereon applied in extinguishment of the debt.—Frost v. Pacific Sav. Co., Oreg., 70 Pac. Rep. 814.

197 VENDOR AND PURCHASER—Bona Fide Purchaser.— The exclusive possession of property by a married woman after separation from her husband puts a purchaser on inquiry as to her rights therein. — Allen v. Moore, Colo., 70 Pac. Rep. 682.

198. VENDOR AND PURCHASER — Liability of Vendee.— That the amount of an incumbrance on land is considered by the purchaser in fixing the price for the equity of redemption does not make him personally liable on such incumbrance. — Lexington Bank v. Salling, Neb., 92 N. W. Rep. 318.

199. WILLS—Lapsed Devise.—A devise to one, not a descendant, and to his heirs and assigns, forever, lapsed on the devisee's death before that of the testator, and notes executed in consideration of the devisee were not enforceable.—Ballanger v. Camplin, Ind., 64 N. E. Rep. 931.

200. WILLS - Life Tenant's Use of Principal. — Where life tenant has use of income with power to use as much of the principal as necessary, remaindermen cannot compel his executors to show necessity of the use made by the life tenant.—*In re* Parsons, 78 N. Y. Supp. 975.

201. WILLS—Opinions of New Expert Witnesses.—In order to avoid a will on the ground of undue influence it must appear that testator's free agency was destroyed and his will overborne by excessive importunity, imposition or fraud, so that the testamentary paper as signed and witnessed does not express his wishes as to the disposition of his estate, but the wishes and purposes of those exercising such influence.— *In re* Will of Wilson W. Griffith, Dist. of Col. App., 31 Wash. Law. Rep. 15.

202. WITNESSES—Corroboration.—In order to sustain a witness and show that he was present, it is not competent to prove that he afterwards told different persons that he was present — Atlanta, K. & N. Ry. Co. v. Strickland, Ga., 42 S. E. Rep. 864.

203. WITNESSES—Evidence.—It is error to permit a witness, over objection, to give an answer involving secondary evidence of a written instrument for the admission of which no foundation has been laid, and the conclusion of the witness as to the nature of the instrument. —Sothman v. State, Neb., 92 N. W. Rep. 303.